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AGREEMENT FOR
RESIDENTIAL RECYCLING SERVICES

Between

THE CITY OF OAKLAND

and

CALIFORNIA WASTE SOLUTIONS

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RESIDENTIAL RECYCLING AGREEMENT

LIST OF ATTACHMENTS

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- B Performance Bond
- C Implementation Plan
- D Service Area Map
- E Report Formats
- F List of City Facilities
- G Contractor's Salvage Revenue Worksheet
- H City's Minority and Women Business Enterprise and Small Local Business Enterprise Programs
- I City of Oakland and Redevelopment Agency Affirmative Action Employment Program and Local Employment Program for Public Works Contracts
- J List of all Current Permits held by Contractor for Operation of Facilities
- K Processing Facility's Relationship to Neighborhood

AGREEMENT BETWEEN THE CITY OF OAKLAND
AND
CALIFORNIA WASTE SOLUTIONS
FOR
RESIDENTIAL RECYCLING SERVICES

THIS AGREEMENT, entered into this 15th day of July, 1997, by and between the CITY OF OAKLAND, a municipal corporation, hereinafter referred to as "City", and California Waste Solutions, hereinafter referred to as "Contractor", is in reference to the following

RECITALS

WHEREAS, City desires to continue its Residential Recycling Program (Program) for the collection, processing, and marketing of Recyclable Materials, and

WHEREAS, City issued a Request for Proposals (RFP) dated January 3, 1997 for the purpose of selecting and entering into an agreement with a qualified vendor to provide such Residential Recycling services, and

WHEREAS, Contractor submitted a proposal dated March 3, 1997, in response to City's RFP, and

WHEREAS, based on City's review and evaluation of proposals submitted in response to the RFP, City has determined Contractor's Proposal best meets the needs for Residential Recycling Services for the Service Area, and

WHEREAS, Contractor represents that it has the necessary experience and expertise to provide Residential Recycling Services, and

WHEREAS, Contractor has demonstrated that it is qualified and competent to perform the Residential Recycling Services desired by the City, and

WHEREAS, City and Contractor entered into and completed negotiations for Residential Recycling Services, and

WHEREAS, City and Contractor desire to enter into an Agreement whereby Contractor shall perform Residential Recycling Services related to City's Program, and

WHEREAS, City and Contractor desire to leave no doubts as to their respective roles, and that by entering in this Agreement, City is not thereby becoming a "generator" or an "arranger" as those terms are used in CERCLA § 107(a)(3), and that it is Contractor, not City, which is "arranging for" the collection and recycling of Recyclable Materials from residents and subscribing Small Businesses in Oakland which may contain Hazardous Waste, and

WHEREAS, Contractor has represented and warranted to City that it has the experience, responsibility, and qualifications to conduct recycling programs and to arrange with residents and other entities in Oakland for the collection, safe transport, processing and sale of Recyclable Materials and disposal of Residue which may inadvertently contain Hazardous Waste, the City Council of the City of Oakland determines and finds that the public interest, health, safety and well being would be best served if Contractor were to make arrangements with residents and other entities to perform these services

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS, AND CONDITIONS HEREIN STATED, CITY AND CONTRACTOR DO HEREBY AGREE AS FOLLOWS

ARTICLE 1.00 -- DEFINITIONS

1 1 AB 939 AB 939 means the California Integrated Waste Management Act (Public Resources Code 40000 et seq), as amended, including rules and regulations promulgated thereunder as amended, which among other things, requires each city and county to divert twenty-five percent (25%) of its waste stream from landfill disposal by December 31, 1995, and to divert fifty percent (50%) of its waste stream from landfill disposal by December 31, 2000

1 2 Agreement This Agreement between City and Contractor for the provision of Residential Recycling Services in a Service Area known as Sectors A & B, including all attachments, and any amendments hereto

1 3 City "City" shall mean the City of Oakland, a municipal corporation, including any subsequently annexed geographic portions thereof

1 4 City Facility "City Facility" shall mean a building occupied by City employees or a building in which City services are provided and which is designated in Attachment F to this Agreement, as amended "City Facilities" may include Administrative, Fire, Police, Parks, Recreation Centers, Library, Headstart Centers, Service Centers, and other buildings as may be determined by the Director from time to time

1 5 City Legislation Any code, ordinance, resolution, motion or any other formal enactment of the City Council which now exists or which may hereafter be adopted which constitutes law or regulation governing the operation of the Contractor

1 6 City Representative The City Manager shall be the City's Representative The City Manager may designate one or more City employees to act as his/her representatives to the Contractor regarding the requirements of this Agreement, and shall notify Contractor of the scope of his/her representatives' authority to act in regards to those matters

1 7 Consumer Price Index or Index The San Francisco/Oakland/San Jose Metropolitan Area Consumer Price Index (Urban Wage Earners and Clerical Workers, 1982-84=100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics, or successor thereto. If the Consumer Price Index ceases to be published, and there is no successor thereto, such other index as City and Contractor shall agree upon in writing shall be substituted for the Consumer Price Index.

1 8 Contaminant "Contaminant" shall mean non-recyclable materials either accidentally or mistakenly collected in the Program or created during Processing, which must be removed from the Recyclable Materials during Processing in order to make those materials marketable.

1 9 Contractor "Contractor" shall mean California Waste Solutions.

1 10 Customer "Customer" shall mean a Single Family Dwelling, Multi-Family Dwelling, City Facility, or Small Business, and the residents, employees, owners, and managers therein.

1 11 Director "Director" shall mean the Director of the Public Works Agency, City of Oakland or his/her designated representative.

1 12 Effective Date "Effective Date" shall be January 1, 1998.

1 13 Extended Term "Extended Term" shall mean the agreement period following the end of the Service Term.

1 14 Force Majeure "Force Majeure" shall mean riots, wars, civil disturbances, insurrections, epidemics, hurricanes, earthquakes, floods, fire, acts of God, government orders and regulations, and other similar catastrophic events which are not the fault of and beyond the reasonable control of the City or Contractor. Labor unrest, including but not limited to strikes, work stoppages or slowdowns, sickouts, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor shall not constitute events of force majeure.

1 15 Hazardous Waste For purposes of this Agreement, Hazardous Waste shall include those wastes defined as Hazardous Waste in Oakland Municipal Code Section 6-4 01 or as subsequently amended. Section 6-4 01 currently defines Hazardous Waste as any hazardous waste, material, substance or combination of materials which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness, or may pose a substantial present or potential risk to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed, and which requires special handling under any present or future federal, state or local law, excluding de minimis quantities of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Sections 41500 and 41802 of the California Public Resources Code.

“Hazardous Waste” shall include, but not be limited to (i) substances that are toxic, corrosive, inflammable or ignitable, (ii) petroleum products, crude oil (or any fraction thereof) and their derivatives, (iii) explosives, asbestos, radioactive materials, toxic substances or related hazardous materials, and (iv) substances defined by applicable local, State or federal law as “hazardous substances,” “hazardous materials,” “reproductive toxins,” or “toxic substances,” including those so defined in any of the following statutes 15 U S Code Section 2601, et seq (the Toxic Substances Control Act), 33 U S Code Section 1251, et seq (the Federal Water Pollution Control Act), 42 U S Code Section 6901, et seq (the Resource Conservation and Recovery Act), 42 U S Code Section 7401, et seq (the Clean Air Act), 42 U S Code Section 9601, et seq (the Comprehensive Environmental Response, Compensation and Liability Act), 49 U S Code Section 1801, et seq (the Hazardous Materials Transportation Act), California Health & Safety Code Section 25100, et seq (Hazardous Waste Control), Section 25300, et seq (the Hazardous Substance Account Act), California Water Code Section 13000, et seq (the Porter-Cologne Water Quality Control Act), the regulations adopted and promulgated pursuant to such statutes, and any regulations adopted pursuant to these statutes after the date of this Agreement, as well as any subsequently enacted federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances

The parties intend that this definition not be limited to any particular statutory or regulatory regime and that it be construed as broadly as possible so that Contractor bears the responsibility for exercising due diligence as provided in Article 5 00 of this Agreement in the investigation, monitoring, control, decontamination, removal, transportation, remediation, and/or safe disposal of Hazardous Waste as appropriate and as required in order to protect against actual or potential risk to public health and safety or the environment

1 16 Household Rate “Household Rate” shall mean the monthly rate paid to the Contractor by the City for service to Single Family and Multi-Family Dwellings

1 17 Market Price Indicator “Market Price Indicator” shall mean the base price used for Profit Sharing calculations and for determining compensation for redirected materials

1 18 Multi-Family Dwelling “Multi-Family Dwelling” shall be defined as any residential structure with five or more living units and/or any residential structure which uses bin service for garbage collection or as determined by the Director

1 19 Oakland Municipal Code The Municipal Code of the City of Oakland, as it may be amended or recodified from time to time

1 20 Plastic Containers “Plastic Containers” shall mean ‘narrow-neck’ PET (#1), HDPE (#2), PVC (#3), LDPE (#4), PP (#5), PS (#6), and Other (#7) plastic containers

1 21 Processing "Processing" shall mean the act of preparing source separated or commingled recyclables into homogeneous types of materials which are in a form suitable to be marketed to end-users

1 22 Program "Program" shall mean the City of Oakland's program for Residential Recycling Services for the collection, Processing, and marketing of Recyclable Materials

1 23 Recyclable Material For the purpose of this Agreement, "Recyclable Material" or "Recyclables" shall mean non-hazardous residential, commercial or industrial materials or by-products which are set aside, handled, packaged or offered for collection in a manner different than Solid Waste, for the purpose of being reused or processed and then returned to the economic mainstream in the form of commodities, and includes Source Separated Materials as defined in the Oakland Municipal Code

1 24 Residential Recycling Services "Residential Recycling Services" shall be defined to include services provided to Single Family Dwellings, Multi-Family Dwellings, City Facilities, and subscribing Small Businesses

1 25 Residue "Residue" for the purpose of this Agreement shall be defined as Contaminant material, separated from Recyclable Materials which cannot be recycled, composted, marketed or otherwise utilized, and which shall be disposed of as Solid Waste, medical waste or Hazardous Waste, as appropriate

1 26 Service Area "Service Area" shall mean the geographic area in which the City authorizes the Contractor to provide Recycling Services as defined in this Agreement

1 27 Service Term "Service Term" shall mean the Agreement period from January 1, 1998 to and including December 31, 2004

1 28 Single Family Dwelling "Single Family Dwelling" shall be defined as any residential structure which has four or fewer living units within it and/or those structures which use can service for garbage or as determined by the Director

1 29 Small Business "Small Business" means a business which is within one block of a Single Family Dwelling or Multi-Family Dwelling and (a) uses can/cart service for Solid Waste *or* (b) shares bin service for Solid Waste with other Small Businesses *or* (c) generates an amount of Recyclables similar to a Single Family Dwelling Unless otherwise requested by the owner(s) of an in-home offices, an in-home office shall be eligible to participate in the Program but without any special considerations or privileges other than those provided to the dwelling unit

1 30 Solid Waste "Solid Waste" shall mean all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable or

animal solid and semisolid wastes, and other discarded solid and semisolid wastes as defined in California Public Resources Code Section 40191, as that Section may be amended from time to time, but does not include Source Separated Recyclables, abandoned vehicles and parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, unacceptable waste or yard waste

1 31 Source Separated Materials “Source Separated Materials” shall mean Targeted Recyclable Materials that have been segregated from Solid Waste by or for the generator thereof on the premises at which they were generated for handling in a manner different from that of Solid Waste

1 32 Solid Waste Franchise Agreement “Solid Waste Franchise Agreement” shall mean that Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services between the City of Oakland and Waste Management of Alameda County dated December 1, 1995, including all exhibits and any amendments thereto

1 33 Targeted Recyclable Materials “Targeted Recyclable Materials” shall be those Recyclable Materials collected in the Program and shall be

- a Newspaper
- b Mixed paper (including white and colored paper, magazines, telephone books, chipboard, junk mail, and high grade paper)
- c Corrugated cardboard
- d Glass containers
- e Metal containers (ferrous, non-ferrous, and bi-metal containers including empty and dry latex paint cans and aerosol containers)
- f Aluminum foil and pie plates
- g Plastic containers
- h Polycoated paper containers, including aseptic packaging (e g , drink boxes and soy milk boxes) and gable top milk and juice cartons
- i Used motor oil
- j Used motor oil filters

The City and the Contractor may mutually agree to include additional materials or remove materials from this list of Targeted Recyclable Materials

ARTICLE 2 00 -- REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor hereby makes the following representations and warranties for the benefit of the City as of the date of this Agreement

2 1 Duly Organized and Qualified to do Business Contractor is duly organized and validly existing as a corporation in good standing under the laws of the State of California

2 2 Corporate Authorization Contractor has full legal right, power, and authority to execute, deliver, and perform this Agreement, and has duly authorized the execution and delivery of this Agreement by all necessary and proper action by its board of directors, or by its shareholders, if necessary

2 3 Agreement Duly Executed The persons signing this Agreement on behalf of Contractor have been authorized by Contractor to do so, and this Agreement has been duly executed and delivered by Contractor in accordance with the authorization of its board of directors, or shareholders if necessary, and constitutes a legal, valid and binding obligation of Contractor enforceable against Contractor in accordance with its terms

2 4 No Conflict with Applicable Law or Other Documents Neither the execution and delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations hereunder (i) conflicts with, violates or will result in a violation of any existing applicable law, (ii) conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing agreement or instrument to which Contractor is a party, or by which Contractor or any of Contractor's properties or assets is bound

2 5 No Litigation There is no action, suit, proceeding or, to the best of Contractor's knowledge, investigation at law or equity, before or by any court or governmental entity, pending or threatened against Contractor or otherwise affecting Contractor, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor

2 6 Financial Ability, Disclosures, No Material Change Contractor has sufficient financial resources to perform all aspects of its obligations hereunder Contractor has provided the City with financial statements for the period ending December 31, 1996 which present fairly, in accordance with generally accepted accounting principles, the financial condition of Contractor There has been no material adverse change in Contractor's financial condition since the date of these financial statements

2 7 Expertise Contractor has the expertise, professional, and technical capability to perform all of its obligations under this Agreement

2 8 Contractor's Investigation Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement, its content and preparation, the work to be performed by Contractor under the Agreement, and warrants that the Agreement accurately and fairly represents the intentions of Contractor, and enters into this Agreement on the basis of that independent investigation

ARTICLE 3.00 -- TERM AND SCOPE OF AGREEMENT

3 1 Service Term The Service Term of this Agreement shall be from the Effective Date and shall end on December 31, 2004

3 2 Extended Term At the expiration of the Service Term, this Agreement may be continued on a month-to-month basis at the sole discretion of the City for up to a maximum of twelve (12) months under the then existing terms and conditions City shall give notice in writing of no less than one year (365 days) of its intention to exercise its extension option

3 3 Evaluation of Performance The City shall evaluate the performance of the Contractor on an annual basis The City and Contractor shall meet to resolve areas of concern and review suggestions and/or recommendations for improving services Nothing in this section shall preclude the City or Contractor from scheduling additional meetings if necessary Said evaluations shall commence at the end of the 1998 calendar year and occur each year thereafter during the Service Term The City's failure to evaluate the Contractor as set forth in this section shall not affect the rights and obligations of the City or Contractor in the rest of this Agreement

3 4 Conditions to Effectiveness of Agreement

3 4 1 Obligation of City to Perform The obligation of the City to perform under this Agreement is subject to the satisfaction on or before the Effective Date of each and every one of the conditions set forth below, each of which may be waived in whole or in part by the City

3 4 1 1 Accuracy of Representation The representations and warranties of Contractor made in Article 2 00 of this Agreement shall be true and correct on and as of the Effective Date

3 4 1 2 Absence of Litigation There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement or seeking to restrain or enjoin its performance

3 4 1 3 Furnishing of Bond and Insurance Contractor shall have furnished the Performance Bond, required pursuant to Article 15 00 and in substantial conformance with Attachment B, and the evidence of insurance policies required by Article 16 00, meeting all the requirements of this Agreement

3 4 1 4 Effectiveness of City Approval The approval of this Agreement by the City shall have become effective, pursuant to California law

3 4 1 5 Implementation Plan Contractor shall submit, no later than August 1, 1997, subject to review and approval by the City, a detailed implementation plan addressing all foreseeable Program start-up issues, which shall be included as

Attachment C The City's approval of the implementation plan shall not be unreasonably withheld

3 4 2 Obligation of Contractor to Perform The obligation of Contractor to perform under this Agreement is subject to the satisfaction on or before the Effective Date of both of the conditions set forth below, each of which may be waived in whole or in part by Contractor

3 4 2 1 Absence of Litigation There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement, or seeking to enjoin its performance

3 4 2 2 Effectiveness of City's Approval The approval of this Agreement by the City shall have become effective, pursuant to California law

3 4 3 Notice If either party wishes to assert that a condition for its benefit has not been satisfied and has not been waived on the Effective Date, it must deliver written notice to that effect to the other party If no such notice is received, the Agreement will become effective on the Effective Date and neither party may thereafter assert that a condition has not been satisfied or waived and that the Agreement is not effective This paragraph is not intended to prevent the City from seeking to employ other remedies in the event a representation or warranty by Contractor made pursuant to Article 2 00 is later discovered not to be true and correct or to remedy a failure by Contractor to furnish the required insurance and bond

3 5 Grant and Scope of Agreement Subject to the requirements and conditions of this Agreement, the City hereby grants to Contractor the privilege and duty during the Service Term, and any extension thereof, to engage in the business of collecting, transporting, Processing and marketing of Targeted Recyclable Materials generated by Single Family Dwellings, Multi-Family Dwellings, City Facilities, and Small Businesses, located within the Contractor's Service Area

Contractor recognizes that this Agreement does not provide any additional rights and that it must abide by the terms of the Oakland Municipal Code Chapter 6, Article 4

The execution of this Agreement to collect, transport, process, and market Recyclable Material shall be interpreted to be consistent with federal and state laws, now and during the Service Term and any Extended Term The scope of this Agreement shall be limited by current and developing state and federal laws with regard to Solid Waste handling, exclusive franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines In the event that future interpretations of current law, or enactment of new laws limit the ability of the City to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by Contractor to arise out of further limitations of the scope of the Agreement as set forth herein In such event, it shall be the

responsibility of Contractor to minimize the financial impact to other services being provided as much as commercially feasible

ARTICLE 4 00 -- SERVICES PROVIDED BY CONTRACTOR

4 1 General Contractor shall provide Recycling collection, Processing and marketing services as described in this Agreement Contractor shall provide all labor, materials, equipment, supplies, supervision and other items necessary for the performance of the services under this Agreement The enumeration of, and specifications of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated or not The work to be performed by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents, City Facilities, and subscribing Small Businesses within the Service Area are provided reliable, courteous and high-quality Residential Recycling Services at all times The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided for in this Article, whether such other aspects are enumerated elsewhere in this Agreement or not

4 1 1 Transfer of Loads on Public Streets and Roads Contractor is prohibited from transferring loads from one vehicle to another on any public thoroughfare unless there is a necessity to do so because of the mechanical failure or accidental damage to a vehicle

4 2 Contractor's Service Area Contractor's Service Area shall be defined by the map attached as Attachment D The street and/or physical boundaries of this service are as follows

The Northern, East and West borders are the Oakland City Limits The South border is the Lake Merritt Channel, Lakeshore Avenue, East 18th Street, Park Boulevard, Interstate 580, Fruitvale Avenue, MacArthur Boulevard, Lincoln Avenue, and Joaquin Miller Road (with the exception of homes located on Pierpoint Avenue)

Service Area boundary disputes shall be resolved by the Director, whose decision will be final The Director may also make minor adjustments to Service Area boundaries as required to increase the Program's effectiveness and efficiency These adjustments shall be limited to a maximum increase or decrease of the number of dwellings in Contractor's Service Area of one and one-half percent (1 5%) estimated by City to be in the Service Area as of Agreement execution (70,770) The City and Contractor may mutually agree upon increases or decreases greater than said amounts

Contractor agrees not to provide collection services for Targeted Recyclable Materials at Single and/or Multi-Family Dwellings to areas within the City but outside of Contractor's Service Area without the written permission of the Director Contractor acknowledges that the other recycling contractor for the City's Residential Recycling Program has provided a reciprocal agreement to the City

4 3 Single Family Dwelling Collection and Service Requirements

4 3 1 Frequency of Collection Contractor shall provide weekly collection to all Single Family Dwellings on the same day as Solid Waste collection unless otherwise approved by the Director Contractor shall recognize all holidays which are delineated in the Solid Waste Franchise Agreement and delay services by one day to ensure that Contractor's collection schedule conforms to the Solid Waste collection schedule Said holiday schedule may result in Contractor performing collection services approximately five Saturdays per year City shall communicate holiday schedules to Contractor as necessary

4 3 2 Material Preparation Requirements

- a Single Family Dwellings will be required to place commingled containers (glass, metal, aseptic, and Plastic Containers) in one 18 gallon recycling bin Labels and closures are not required to be removed, containers are not required to be flattened
- b Newspaper is to be bundled or placed in a paper sack (e g , grocery bag) and placed in a second 18 gallon recycling bin All newspaper insert materials are allowable
- c Mixed paper is to be bundled or placed in a separate paper sack and placed in the second 18 gallon recycling bin "Stickies," envelope windows, and other similar minor Contaminants are allowable
- d Corrugated cardboard is required to be flattened and no larger than 3' by 3' Contractor is obligated to collect all corrugated cardboard meeting the dimensional requirements which is set-out for collection
- e Used motor oil is required to be placed in a Contractor-provided container and placed next to the 18 gallon recycling bins Contractor may decline collection of oil in incorrect containers Contractor shall decline collection of contaminated used motor oil or any other fluids which have been set-out for collection
- f Used motor oil filters are required to be placed in a Contractor-provided container and placed next to the 18 gallon recycling bins Contractor may decline collection of oil filters in incorrect containers

4 3 3 Collection Time and Location Collection from Single Family Dwellings shall occur between the hours of 6 00 a m and 6 00 p m , Monday through Friday, regardless of weather conditions and on the same day as when Solid Waste is collected by the City's exclusive franchised Solid Waste collector The Director may authorize an extension of hours on a route by route basis

Collection from Single Family Dwellings shall be performed at curbside or streetside, depending on the area with the following exception Contractor shall provide special handling service for up to one and one-half percent (1 5%) of the number of Single Family Dwellings in

Contractor's Service Area, which shall include backyard, sideyard, driveway, front porch or alley service to qualifying residents, limited to those physically unable to carry Recyclable Materials to the curb, or as approved by the Director. A resident will be considered qualified for special handling service if the resident receives backyard solid waste collection service for no additional charge pursuant to section 4 2 2(i) of the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services between the City of Oakland and Waste Management of Alameda County, Inc. Contractor may request that qualifying residents place bins in a location visible from the street.

4 3 4 Material Handling Contractor shall collect all Targeted Recyclable Materials in, overflowing, or adjacent to recycling containers or bags and when material has been scattered within five feet of the bin due to scavenging or adverse weather conditions.

Contractor is authorized to decline collection of Recyclable Materials mixed with garbage, Hazardous Waste, or not prepared in accordance with Program requirements. If Contractor declines collection, Contractor shall affix a note to or place a note within the recycling container explaining why collection service was declined. Setouts improperly prepared will be cleaned-up and taken by the driver the first time, with Program literature left behind which references the specific problem. Contractor's drivers will reject setouts from Single Family Dwellings who continue to improperly prepare setouts. Rejected setouts will be tagged with a brightly colored tag visible to the resident and anyone viewing the setout. Contractor's drivers will report the address and reason(s) for rejection to Contractor's dispatcher and customer service representative by two-way radio. At the end of business that day, Contractor will mail an explanation of the setout rejection and Program literature to the resident. Should the resident call Contractor's office in the meantime, a record of the rejection will be on file as of the moment the setout was rejected. Contractor's customer service staff will explain the problem from an informed perspective, and, where necessary and practical, make the concession of having the driver return to get a setout that will have been repaired by the resident in the meantime.

If any used motor oil is spilled, by either resident or Contractor's employee, Contractor shall use appropriate absorbent and/or other materials to clean up the spill.

All Targeted Recyclable Materials which are collected shall be reused or processed and then returned to the economic mainstream in the form of commodities. Except for Contaminants up to the level specified in the Oakland Municipal Code and Section 3 5 of this Agreement, Targeted Recyclable Materials may not be used for disposal or alternative daily cover at landfills, transformation, nor any use which would impact the City's compliance or credit under AB 939 and/or the Alameda County Recycling Initiative (Measure D) without express written authorization from the Director.

4 3 5 Recycling Containers Contractor shall be solely responsible for purchase and distribution of a second 18 gallon recycling container for all Single Family Dwellings. City will reimburse Contractor actual purchase costs for the second 18 gallon containers, not to

exceed \$225,000, within 30 days after receiving a valid invoice Contractor shall be solely responsible for purchase and distribution of all replacement recycling containers and all necessary oil recycling containers Style, color, size, manufacturer, and copy to be printed or embossed on the containers shall be subject to approval by the City

The recycling containers shall be constructed of HDPE with a minimum 25 percent post-consumer HDPE content City's name and logo shall be embossed on the containers City shall retain ownership of all recycling containers (i.e., those which are approximately 18 gallons in volume) distributed to Single Family Dwellings upon expiration or termination of this Agreement If this Agreement is terminated before the end of the Service Term, the City shall purchase said containers at their unamortized value or at a mutually agreed upon price

Containers for the collection of used motor oil shall have a minimum of four quarts of volume, shall be clear or translucent, have a secure screw top cap, and be clearly marked as used motor oil containers The collection, handling, and transportation of used motor oil containers shall be in compliance with all applicable laws and regulations

All newly occupied or constructed housing units shall be provided recycling containers and collection service within one week of service request during the duration of the Program

4.3.6 Replacement of Recycling Containers In the event recycling containers are lost, stolen, damaged or destroyed, Contractor shall be responsible to provide replacement containers within one week of request by customer or City Contractor shall be solely responsible for the purchase and distribution of replacement containers During Year One, Two and Three of the Agreement, Contractor shall be responsible for providing annual replacement containers totaling five percent (5%) of the number of Single Family Dwellings serviced During Year Four, Five, Six and Seven, Contractor shall be responsible for providing annual replacement containers totaling seven percent (7%) of the number of Single Family Dwellings serviced Should the City elect to extend the Agreement pursuant to Section 3.2, Contractor shall be responsible for providing additional replacement containers totaling seven percent (7%) of the number of Single Family Dwellings serviced on an annualized basis If the City elects to extend the Agreement for less than twelve months, said amount of replacement containers shall be pro-rated The quantity of replacement containers owed to the City shall be cumulative from year to year Upon expiration of the Agreement, all remaining containers owed to the City shall be provided within 30 calendar days, unless the City and Contractor mutually agree upon a reasonable form of compensation to the City for said containers If during any year the City requires more replacement containers than the number required to be provided by Contractor, Contractor shall supply and deliver containers at Contractor's actual cost, which may include reasonable transportation and administration expenses, not to exceed \$8.25 per container inclusive of all costs, and the City shall reimburse Contractor for said additional cost within thirty (30) days of receipt of a correct invoice

Containers for used motor oil collection shall be distributed to residents within one week of request When Contractor collects full or partially full containers from a household,

Contractor shall leave the same number of empty containers at the point of collection or inside the empty recycling container

4 4 Multi-Family Dwelling Collection and Service Requirements

4 4 1 Frequency of Collection Contractor shall provide, at a minimum, weekly collection to participating Multi-Family Dwellings

4 4 2 Material Preparation Requirements

- a Multi-Family Dwellings will be required to place commingled containers (glass, metal, aseptic, and Plastic Containers) in a recycling container provided by Contractor. Labels and closures are not required to be removed, containers are not required to be flattened
- b Newspaper is to be placed in a second recycling container. All newspaper insert materials are allowable
- c Mixed paper is to be placed either with newspaper or in a separate recycling container. "Stickies," envelope windows, and other similar minor Contaminants are allowable
- d Corrugated cardboard is required to be flattened and no larger than 3' by 3' and be placed either in a paper container or placed adjacent to the recycling containers. Contractor is obligated to collect all corrugated cardboard meeting the dimensional requirements which is set-out for collection
- e Used motor oil is required to be placed in a Contractor provided container and placed next to the recycling containers. Contractor may decline collection of oil in incorrect containers. Contractor shall decline collection of contaminated used motor oil or any other fluids which have been set-out for collection
- f Used motor oil filters are required to be placed in a Contractor provided container and placed next to the recycling containers. Contractor may decline collection of oil filters in incorrect containers

4 4 3 Collection Time and Location Collection from Multi-Family Dwellings shall occur between the hours of 6 00 a m and 6 00 p m , Monday through Saturday, regardless of weather conditions. The Director may authorize an extension of hours on a route by route basis

Collection from Multi-Family Dwellings shall be performed at designated areas within the property confines with prior consent of the building owner/management, and in compliance with any applicable City codes and ordinances

4 4 4 Material Handling Contractor shall collect all Targeted Recyclable Material in, overflowing, or adjacent to recycling containers and when material has been scattered within five feet of the bin due to scavenging or adverse weather conditions

Contractor is authorized to decline collection of Recyclable Materials mixed with garbage, Hazardous Waste, or not prepared in accordance with Program requirements. If Contractor declines collection, Contractor shall affix a note to or place a note within the recycling container explaining why collection service was declined. Setouts improperly prepared will be cleaned-up and taken by the driver the first time, with Program literature left behind which references the specific problem. Contractor's drivers will reject setouts from Multi-Family Dwellings who continue to improperly prepare setouts. Rejected setouts will be tagged with a brightly colored tag visible to the resident and anyone viewing the setout. Contractor's drivers will immediately report the address and reason(s) for rejection to Contractor's dispatcher and customer service representative by two-way radio. At the end of business that day, Contractor will mail an explanation of the setout rejection and Program literature to the resident. Should the resident call Contractor's office in the meantime, a record of the rejection will be on file as of the moment the setout was rejected. Contractor's customer service staff will explain the problem from an informed perspective, and, where necessary and practical, make the concession of having the driver return to get a setout that will have been repaired by the resident in the meantime.

If any used motor oil is spilled, by either resident or Contractor's employee, Contractor shall use appropriate absorbent and/or other materials to clean up the spill.

All Targeted Recyclable Materials which are collected shall be reused or processed and then returned to the economic mainstream in the form of commodities. Except for Contaminants up to the level specified in the Oakland Municipal Code and Section 3.5 of this Agreement, Targeted Recyclable Materials may not be used for disposal or alternative daily cover at landfills, transformation, nor any use which would impact the City's compliance or credit under AB 939 and/or Measure D without express written authorization from the Director.

4 4 5 Recycling Containers Contractor shall be solely responsible for purchase and distribution of new and/or replacement recycling containers. Style, color, size, manufacturer, and copy to be printed or embossed on the containers shall be subject to approval by the City.

Multi-Family Dwellings shall be provided recycling containers (i.e. individual containers, community bins, community carts) with adequate capacity to store deposited Recyclables for a minimum collection frequency of once per week. The multi-family recycling containers to be used for storage and collection of Recyclables shall be subject to approval by the City. Multi-family recycling containers shall be embossed, imprinted, or have decals with the City's name and logo. Multi-family recycling containers shall be properly maintained, including washing of interior and exterior when necessary or as directed by the Director or

building owner/manager Contractor shall retain ownership of all multi-family recycling containers larger than approximately 18 gallons in volume

Upon Agreement termination, Contractor shall remove all multi-family recycling containers within four weeks unless other arrangements are made with the individual Multi-Family Dwelling or buildings or with the City

Used motor oil containers for Multi-Family Dwellings shall be four-quart containers or larger The collection, handling, and transportation of used motor oil containers shall be in compliance with all applicable laws and regulations

The number and size of community recycling containers to be provided to the Multi-Family Dwellings shall have adequate capacity to service all eligible units If City determines additional containers are required, Contractor shall supply and deliver required containers within one week Location of the community recycling containers shall be coordinated with the building owner/manager

4 4 6 Replacement of Recycling Containers Contractor shall be required to provide all necessary replacement recycling containers for Multi-Family Dwellings, except that upon prior notice to and approval from City, Contractor may cease service at a Multi-Family Dwelling if containers provided to the Multi-Family Dwelling are chronically damaged or destroyed

4 5 City Facility Collection and Service Requirements

4 5 1 Frequency of Collection Contractor shall provide, at a minimum, weekly collection at the City Facilities, listed in Attachment F, except that upon mutual prior agreement of City and Contractor, certain City Facilities may receive "on-call," less-than-weekly collection The City may reasonably modify this list by sending a letter to Contractor indicating the facility and type and frequency of service required Contractor shall commence service within five (5) working days of a request from the City

4 5 2 Material Preparation Requirements City Facilities shall follow the material preparation requirements pursuant to Sections 4 3 2 or 4 4 2 depending on the type of recycling containers required to adequately service the facility

4 5 3 Material Handling Contractor shall collect all Targeted Recyclable Material in, overflowing, or adjacent to recycling containers or bags and when material has been scattered within five feet of the bin due to scavenging or adverse weather conditions

Contractor is authorized to decline collection of Recyclable Materials mixed with garbage, Hazardous Waste, or not prepared in accordance with Program requirements If Contractor declines collection, Contractor shall affix a note to or place a note within the recycling container explaining why collection service was declined Setouts improperly

prepared will be cleaned-up and taken by the driver the first time, with Program literature left behind which references the specific problem Contractor's drivers will reject setouts from City Facilities who continue to improperly prepare setouts Rejected setouts will be tagged with a brightly colored tag visible to the City Facility and anyone viewing the setout Contractor's drivers will immediately report the address and reason(s) for rejection to Contractor's dispatcher and customer service representative by two-way radio At the end of business that day, Contractor will mail an explanation of the setout rejection and Program literature to the City Facility Should the City Facility call Contractor's office in the meantime, a record of the rejection will be on file as of the moment the setout was rejected Contractor's customer service staff will explain the problem from an informed perspective, and, where necessary and practical, make the concession of having the driver return to get a setout that will have been repaired by the City Facility in the meantime

All Targeted Recyclable Materials which are collected shall be reused or processed and then returned to the economic mainstream in the form of commodities Except for Contaminants up to the level specified in the Oakland Municipal Code and Section 3 5 of this Agreement, Targeted Recyclable Materials may not be used for disposal or alternative daily cover at landfills, transformation, nor any use which would impact the City's compliance or credit under AB 939 and/or Measure D without express written authorization from the Director

4 5 4 Recycling Containers Contractor shall be solely responsible for purchase and distribution of new and/or replacement recycling containers Style, color, size, manufacturer, and copy to be printed or embossed on the containers shall be subject to approval by the City

City Facilities shall be provided recycling containers with adequate capacity to store deposited Recyclables for a minimum collection frequency of once per week The City Facility recycling containers to be used for storage and collection of Recyclables shall be subject to approval by the City City Facility recycling containers shall be embossed, imprinted, or have decals with the City's name and logo City Facility recycling containers larger than approximately 18 gallons in volume shall be properly maintained, including washing of interior and exterior when necessary or as directed by the Director or City Facility manager Contractor shall retain ownership of all City Facility recycling containers larger than approximately 18 gallons in volume If City determines additional containers are required, Contractor shall supply and deliver required containers within one week Location of the recycling containers shall be coordinated with the City

Upon Agreement termination, Contractor shall remove all City Facility recycling containers within four weeks unless other arrangements are made with the City

4 5 5 Replacement of Recycling Containers Contractor shall be required to provide all necessary replacement recycling containers for City Facilities

4 6 Small Business Collection and Service Requirements

4 6 1 Frequency of Collection Contractor shall provide, at a minimum, weekly collection to participating Small Businesses Contractor may provide service on the same day of the week as nearby residential collection or may establish a separate collection schedule for Small Businesses Collection schedules shall be provided to the City, in writing

4 6 2 Small Business Material Preparation Requirements

- a Small Businesses will be required to place commingled containers (glass, metal, aseptic, and Plastic Containers) in a recycling container(s) that meets established guidelines, is provided by the Small Business, and is placed next to a recycling container provided by Contractor, or, may place commingled containers into a recycling container provided by Contractor, in either case, commingled containers are to be set-out in a separate container from newspaper and mixed papers Labels and closures are not required to be removed, containers are not required to be flattened
- b Newspaper is to be placed in a recycling container provided by Contractor All newspaper insert materials are allowable
- c Mixed paper is to be placed in the same container as newspaper "Stickies," envelope windows, and other similar minor contaminants are allowable
- d Corrugated cardboard is required to be flattened and no larger than 3' by 3' and be set out (1) stacked or bundled next to a recycling container provided by Contractor, (2) in a rigid 18 gallon recycling bin next to a recycling container provided by Contractor, or (3) in a box of similar dimensions to an 18 gallon recycling bin next to a recycling container provided by Contractor
- e Used Motor Oil and used motor oil filter collection services are not required to be offered to Small Businesses

4 6 3 Minimum Amounts and Setouts There shall be no minimum level of recycling generation before a Small Business may participate in the Program

All recycling containers used by Small Businesses to participate in this Program must be placed at the curb for collection Contractor must provide collection service to subscribing Small Businesses as described in this Section, and must service every Small Business in the Service Area that wishes to subscribe

4 6 4 Handling and Delivery Contractor shall collect all Targeted Recyclable Material in, overflowing, or adjacent to recycling containers and when material has been scattered within five feet of the recycling container due to scavenging or adverse weather conditions

Contractor is authorized to decline collection of Recyclable Materials mixed with garbage, Hazardous Waste, or not prepared in accordance with Program requirements. If Contractor declines collection, Contractor shall affix a note to or place a note within the recycling container explaining why collection service was declined. Setouts improperly prepared will be cleaned-up and taken by the driver the first time, with Program literature left behind which references the specific problem. Contractor's drivers will reject setouts from Small Businesses who continue to improperly prepare setouts. Rejected setouts will be tagged with a brightly colored tag visible to the Small Business and anyone viewing the setout. Contractor's drivers will immediately report the address and reason(s) for rejection to Contractor's dispatcher and customer service representative by two-way radio. At the end of business that day, Contractor will mail an explanation of the setout rejection and Program literature to the Small Business. Should the Small Business call Contractor's office in the meantime, a record of the rejection will be on file as of the moment the setout was rejected. Contractor's customer service staff will explain the problem from an informed perspective, and, where necessary and practical, make the concession of having the driver return to get a setout that will have been repaired by the Small Business in the meantime.

In the event of chronic incorrect setouts, Contractor may end service to a Small Business with prior notification. If the Small Businesses pre-paid for Program services, Contractor must issue a pro-rated refund for the remaining amount of service.

All Targeted Recyclable Materials which are collected shall be reused or processed and then returned to the economic mainstream in the form of commodities. Except for Contaminants up to the level specified in the Oakland Municipal Code and Section 3.5 of this Agreement, Targeted Recyclable Materials may not be used for disposal or alternative daily cover at landfills, transformation, nor any use which would impact City's compliance or credit under AB 939 and/or Measure D without express written authorization from the Director.

4.6.5 Small Business Recycling Containers and Rates For the purpose of providing service to subscribing Small Businesses, Contractor will use as the "recycling container" a clear plastic bag of sufficient capacity to line a 40-gallon container. All costs of the plastic bag service (including but not limited to bag purchase and delivery) is included in the per-bag collection rate for Small Businesses. For Year One of the Agreement, Contractor shall receive \$1.15 per bag from Small Businesses, City is not responsible for such payment.

Alternatively, the Small Business may choose to receive collection service in carts or 18-gallon recycling bins similar to containers used for Single Family Dwellings and/or Multi-Family Dwellings. In such a case, the Small Business must use City-owned approved containers or Contractor-owned approved containers for an additional charge. For Year One of the Agreement, Contractor shall receive \$5.00 per month from Small Businesses choosing this alternative service, City is not responsible for such payment. This \$5.00 per month rate includes only the collection service, it excludes delivery and rental of the recycling container (e.g., 18-gallon bin, 64-gallon cart) used for the alternative service described in this paragraph.

The rates in this section shall be published, apply to all requesting Small Businesses, and be the maximum rate charged to Small Businesses by Contractor for the service, Contractor may publish lower rates upon prior notification to, and agreement from, City Any other rates (e g , recycling container delivery, rental, or purchase rates) for Small Businesses shall be agreed to in advance by City and Contractor, shall be published, shall apply to all requesting Small Businesses, and shall be the maximum rate charged to Small Businesses by Contractor for that service, and shall be established by City and Contractor by August 1, 1997, it is the City and Contractor's intention that such rates will not exceed the actual cost to provide the specified service, which may include reasonable transportation and administration expenses

Rates shall be paid directly to Contractor by the Small Business, property owner, or their agent Contractor shall establish regular billing protocol, subject to City approval The City may, at its option, subsidize the Small Business rates Adjustments to the Small Business rates shall be made in a manner similar to that described in Section 13 2, and an increase to the Small Business rates shall not be for a percentage amount greater than that established for the Household Rate as determined in Section 13 2

If Contractor generates bills or invoices as part of Small Business service, the City will be allowed to include inserts/information If Contractor informs City in advance that inclusion of materials raises postage or increases materially the work or expense associated with the preparation of mailing items, and the City still wishes to include the inserts/information, the City will pay the incremental cost associated with the City's materials

4 6 6 Right to Recycle Targeted Recyclable Materials set out by Small Businesses for collection by the Contractor are to be collected by the Contractor The City will make reasonable efforts to reduce scavenging, however, the City and Contractor acknowledge that in some areas, scavengers may remove a substantial portion of the Recyclable Materials Provisions of Section 4 8 apply herein

Nothing in this Agreement shall obligate a Small Business to use Contractor as their recycling service provider, for some or all materials Small Businesses may choose the Contractor for some Recyclables and other service providers for other Recyclable Materials, provided the set-out method is distinct Nothing in this Agreement shall limit the right of any person to donate, sell, transport, pay for the removal of, or otherwise dispose of their own Recyclables or organic recyclable material provided that such activity is in accordance with the provisions of the Oakland Municipal Code

4 6 7 Collection Method Contractor shall be allowed to mix materials from Single-Family, Multi-Family, City Facility and Small Business sources in the same collection vehicle

4 6 8 Public Education Any public education materials used by Contractor will be jointly developed by the City and Contractor The City affirms that when it receives calls on

the City's recycling hotline from eligible Small Businesses, it will promote Contractor's Small Business recycling service

Contractor shall staff tables and promote its Small Business recycling service at a minimum of two events per year where significant numbers of Oakland businesses are in attendance. Examples include the Festival at the Lake and the Chamber of Commerce's Small Business Trade Fair.

4.7 Changes in Scope of Work

4.7.1 General City may direct changes in the scope of work, including the addition of new services and programs, the deletion of existing services, and the modification of the manner in which existing services are performed or provided. Contractor shall promptly and cooperatively comply with such directions and the Household Rate shall be adjusted to fairly and fully reflect the additional cost, or cost reduction, associated with the directed change in scope of services. The City's authority to delete existing services is not in derogation of Contractor's rights. If a service within the scope of the Agreement is discontinued at the City's direction pursuant to this section, the City shall not allow a third party to perform said services. If the City deletes services, it will take into account when adjusting the Household Rate not only Contractor's reduced operating costs, but also the impact of capital equipment no longer fully utilized. Contractor must provide financial information showing the impact of service changes on capital equipment.

4.7.2 New Programs Pilot programs and innovative services which may entail new collection methods or additional Targeted Recyclable Materials are included among the kinds of changes City may direct. Before directing a change in service which would affect Contractor's costs by more than \$25,000 per year, City will request Contractor to evaluate and report on the change being considered. Within ninety (90) days of receiving such a request, Contractor shall provide a report to City on the change, including (i) description of collection methodology to be employed, (ii) equipment to be utilized, including the number and type of vehicles required and the number required to be purchased, if any, (iii) labor requirements (number of employees by classification), (iv) requirements for program publicity, customer education, etc., if any, (v) evaluation of financial implications of the program, including a 5-year projection of costs, revenues and effect on the Household Rate, showing the assumptions used and explaining the basis for such assumptions, (vi) advantages and disadvantages of the change, and (vii) a recommendation as to whether the change should be implemented and, if so, an implementation schedule. Contractor will meet with City to present its report.

4.7.3 Implementing Changes in Service If a change in service will affect Contractor's costs by less than \$25,000 per year, Contractor shall implement the change in accordance with a schedule directed by the City. If a change in service will affect Contractor's costs by more than \$25,000 per year, City will consider Contractor's report as provided under Section 4.7.2. If the parties agree on the appropriate amount by which the Household Rate should be adjusted, Contractor shall implement the change in accordance with

the schedule directed by City. If the scope of work is modified pursuant to Section 4.7, the bonding and insurance requirements set forth in Articles 15.00 and 16.00 shall be reviewed for their sufficiency and purpose.

4.7.4 New Technology In the event that technological advancements in the collection, transportation, and Processing of Targeted Recyclable Materials are made, and which if implemented alone or in conjunction with another technology would cumulatively reduce the existing cost to Contractor for providing services or reduce the initial Household Rate established by this Agreement by approximately ten percent (10%) or more, Contractor shall so notify the City, and the City may require Contractor to utilize or implement said new technology and a new Household Rate shall be mutually agreed upon and established. Contractor shall retain the ability to propose changes to the City for the Program for the purpose of maximizing efficiency. Said changes will not be implemented without the written approval of the City.

4.8 Ownership of Recyclables Ownership and the right to possession of Recyclables placed in containers or bins or bundles for collection, or placed at curbside or the designated recycling collection point, shall transfer directly from the Customer to Contractor, by operation of law. Contractor's arrangements with Customers will provide that, subject to the right of the Customer to claim lost property, title and the right to possession, and liability for all Targeted Recyclable Materials which are set out for collection shall pass to Contractor at the time it is set-out by the Customer with the exception of used motor oil whose ownership shall pass to the Contractor at the time of collection. Contractor is not responsible for any materials refused for collection per Sections 4.3.4, 4.4.4, 4.5.3, and 4.6.4.

Subject to Section 18.17, the City shall make a reasonable effort to minimize scavenging by enforcing the State of California's Public Resources Code Sections 41950 and 41951, which makes it unlawful to remove Recyclable Materials which have been set out for collection by Customers for an authorized recycling collector.

Contractor and its representatives, agents, attorneys, heirs, administrators, transferees, assigns, executors, and successors (collectively called "Claimants") hereby unconditionally agree to release, acquit, remise, and forever discharges the City, its elected and appointed officials, officers, agents, employees, and members of commissions (collectively called "City"), from any and all claims, actions, cause of action, damages, demands, injuries, attorneys' fees and costs, and liability, either at law or in equity or of any kind, nature or description, whether presently known or unknown, or whether presently existent or nonexistent, which Claimants has had or now has or may have in the future against City arising out of or based upon the City's efforts to minimize scavenging by enforcing Sections 41950 and 41951 of the California Public Resources Code ("Enforcement Efforts"). Claimants specifically acknowledges that this Agreement extends to and includes all known, unsuspected, unanticipated or undisclosed claims, actions, or causes of action regarding the Enforcement Efforts.

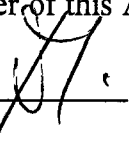
Claimants expressly waives the provisions of Section 1542 of the Civil Code of California which provides as follows

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor "

Claimants, upon advice of counsel, waive and relinquish, now and forever, any and all rights it has or may have under Section 1542 of the Civil Code to the fullest extent allowed by law

Claimants agree and represent that it fully understands the statutory language of Civil Code Section 1542 and with this understanding, nevertheless, elects to and does assume all risks for rights, claims, demands, obligations, causes of actions or liabilities, known or unknown, heretofore and hereafter arising with the subject matter of this Agreement

Contractor Initial Here



City Initial Here



ARTICLE 5 00 -- HAZARDOUS WASTE

5 1 Hazardous Waste

5 1 1 General If Contractor, its employees, agents, or permitted subcontractors, observe any substances which they reasonably believe or suspect to contain Hazardous Waste anywhere within the City, including on, in, under or about City property, including streets, easements, rights of way and City Solid Waste or litter containers, or anywhere within, including on, in, under or about any of its properties, Contractor shall immediately notify the appropriate regulatory agencies and the City

5 1 2 Notice to Customers Contractor shall notify on an ongoing basis all Customers of (i) the prohibition against the set out and delivery of Hazardous Waste and (ii) the obligation of each Customer to provide for the proper handling and disposition of Hazardous Waste Contractor shall refuse to collect or accept any Hazardous Waste The Contractor shall notify the Customer in writing why the collection was not made and to arrange for proper disposal Contractor shall, prior to leaving the location, leave a tag at least 2"x 6" which lists the telephone number for the Alameda County Household Hazardous Waste Program, including the reason for refusing to collect the waste

5 1 3 Contractor to Segregate and Dispose Contractor shall implement procedures to identify and reject materials delivered to its facilities which are Hazardous Waste or which otherwise may not be legally accepted at its facilities under its existing permits and other applicable governmental regulations then in effect Contractor shall segregate for disposition any Hazardous Waste which is identified after waste has been accepted or loaded, and shall not further process or transport such Hazardous Waste except to arrange for its transport and

disposal to a properly permitted recycling, treatment or disposal facility of Contractor's choosing Contractor shall be solely responsible for handling and arranging the transport and disposition of all Hazardous Waste that is collected or received by the Contractor and the costs associated therewith Nothing in this Section prohibits Contractor from making every reasonable effort to recover its special handling and disposal costs from third party generators

5 1 4 Operating Procedures and Employee Training Contractor shall establish, implement and maintain written operating procedures designed to insure Contractor's compliance with the provisions of this Article 5 00 City shall have access to such operating and training manuals Contractor shall establish, implement and maintain an employee training program and shall ensure that employees responsible for the identification, removal, handling, transport and disposal of Hazardous Waste are at all times fully trained Contractor shall maintain documentation which describes the training received by its employees

5 2 Remediation of Spills Contractor shall be solely responsible for any contamination existing at its facilities before or after the date of this Agreement No cost incurred as a result of such contamination shall be recoverable under this Agreement nor in separate administrative or judicial forums Contractor shall diligently and regularly inspect its properties for Hazardous Waste and shall immediately remove and remediate any Hazardous Waste that it knows has been spilled or deposited at any location during the course of its operations Contractor shall be responsible for remediation of its facilities and other locations impacted by spills or releases and the cost of remediation incurred as a consequence of such spills or releases shall not be recoverable under this Agreement Nothing in this Section prohibits Contractor from making every reasonable effort to recover its special handling and disposal costs from third party generators Contractor acknowledges and agrees that this Agreement does not provide the City, its agents, officers or employees with any control whatsoever over Contractor's compliance with environmental laws and regulations

5 3 Record Keeping Contractor shall create and maintain records which document and describe the amounts, nature, and disposition of all Hazardous Waste discovered, released, removed or remediated by Contractor in the course of performing this Agreement All documentation required by this Article 5 00 shall be available for review by the City, and the City shall have the right to audit Contractor's implementation of all programs, procedures and training required under this Article Contractor shall maintain Hazardous Waste records for fifty (50) years Contractor may maintain such records in hard copy, on microfiche or by any other technologically acceptable method for record retention commonly available at the time

ARTICLE 6 00 -- PROGRAM EQUIPMENT

Contractor is responsible for establishing collection, Processing, handling and marketing arrangements for the Targeted Recyclable Materials Equipment utilized for collection, Processing and handling of materials may be owned or leased by the Contractor or the services may be subcontracted out

6 1 Vehicle Specifications, Maintenance and Appearance Equipment shall be of the highest quality in order to produce the quality of work required. Suitability shall be determined by the Director. The Director shall have the right, but not the obligation, to inspect the Contractor's equipment and maintenance records at any time with 24 hours notice, if found lacking, the equipment shall be removed from the Program until defects are remedied. Contractor shall be responsible for providing replacement equipment at no extra cost to City while defects are remedied. Any equipment more than seven (7) years old shall not be used unless it has been rebuilt within the last five years. Rebuilt refers, but is in no way limited, to replacement of working parts and reconditioning or replacement of hydraulic systems in addition to regularly scheduled maintenance. Contractor and all applicable subcontractors shall maintain a maintenance log for each piece of equipment and shall make such log available for City inspection upon request.

All collection equipment shall have appropriate safety markings consisting of all highway lighting, flashing and warning lights, clearance lights, and warning flags, all in accordance with the State Vehicle Code and subject to approval by the Director. Equipment shall be maintained in safe, clean, and sanitary condition at all times. All parts and systems of the collection equipment shall operate properly and be maintained in a condition satisfactory to the Director. Any equipment not meeting these standards shall not be used in this Program.

Contractor's name, phone number and vehicle number shall be visibly displayed on its vehicles, in letters and figures at least four (4) inches high. Vehicles color(s) and paint schemes are subject to the approval of the Director. The City's Program logo and Recycling Hotline telephone number shall be prominently displayed of a size and type style to be approved by the Director. Vehicles shall be painted frequently enough to maintain a positive image as determined by the City, or at least once every five (5) years.

All vehicles used by the Contractor in providing services shall be registered with the Department of Motor Vehicles (DMV) of the State of California, shall be kept clean and in good repair, and, loads shall be kept covered at all times except when material is actually being loaded or unloaded or when the vehicles are moving along a collection route while providing collection service. The collection equipment must be designed to operate while on the route in such a manner as not to allow materials to be littered.

6 2 Vehicle Noise Levels The noise level generated by collection vehicles shall not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet from the collection vehicle measured at an elevation of five (5) feet above the ground level.

6 3 Vehicle Drivers/Driver's Helpers Uniform All collection vehicle drivers and driver's helpers shall wear uniforms, consisting of shirts and, optionally, caps, which identify the workers as being employed by the Contractor and associated with the Program.

6 4 Equipment Inventory Contractor shall furnish the City with an inventory of collection vehicles and other major equipment used by the Contractor for collection, Processing or handling of materials two (2) weeks prior to implementation of service. The Contractor shall update

the inventory lists provided to the City annually, commencing from the Effective Date of this Agreement or at the City's request. Such inventory shall indicate each collection vehicle by number, DMV license number, the age of the chassis and body, the type and capacity of each vehicle used by the Contractor, the number of vehicles, and date of acquisition.

ARTICLE 7.00 -- PROCESSING REQUIREMENTS

A facility for Processing Recyclables collected in the Program shall be capable of accepting the collected materials and Processing them to the degree necessary to be marketable at reasonable prices. Contractor shall maintain adequate procedures, records and controls to ensure **separate and clearly identifiable** material reporting of the materials collected by this Agreement.

7.1 Processing Facility Location and Permits Contractor shall be responsible to acquire all necessary permits and environmental review and clearance for any and all Processing facilities used to fulfill the obligations of this Agreement. This Agreement does not authorize or waive any permit requirements. Contractor was awarded preference points for having a facility located in Oakland, and that facility shall remain in full force and operation throughout the Agreement term. Should Contractor desire to process collected Recyclables at a facility outside of Oakland, Contractor shall make such request in writing and must receive written approval from the City.

7.1.1 Processing Facility's Relationship to Neighborhood To the extent Contractor uses the facility at 1820 10th Street for Processing of the Recyclables collected pursuant to this Agreement, Contractor shall comply with Attachment K.

7.2 Processing System Capacity The system shall have sufficient capacity to receive and process, within five (5) working days, all materials collected in one week. There shall be sufficient space at the Processing facilities to store at least one week's accumulation of materials in the event of equipment failure or downtime, or Contractor shall submit to the City an acceptable contingency plan.

7.3 Processing Residue If Contractor's Processing facility is located within the Oakland City limits, all Residue generated from the Processing of Recyclables must be handled and disposed-of in accordance with the Oakland Municipal Code. The Contractor is responsible for all costs associated with this requirement. Contractor will ensure that, on an annual basis, no more than one percent (1%) of the materials collected through this Program will become Residue.

If Contractor is unable to sell specific collected and processed materials, Contractor may request authorization from the Director to dispose of said materials as Residue. Director shall notify Contractor within ten (10) working days if authorization will be granted.

The City reserves the right to terminate the Agreement if it is found that Recyclables are intentionally disposed-of by the Contractor or its designee without prior written approval by the City.

ARTICLE 8.00 -- FLOW CONTROL OF PROCESSED MATERIAL

The City shall retain the right to redirect processed material to specific markets or end-users located within the City of Oakland or the boundaries of Oakland/Berkeley's Recycling Market Development Zone (RMDZ) Contractor shall redirect materials subject to all the following conditions

- a The City shall give at least ninety (90) days prior written notice of any material redirection,
- b The redirected material may represent up to one hundred percent (100%), by processed weight, of each commodity collected,
- c The material redirection shall continue until Agreement termination or until the City gives at least thirty (30) days prior written notice of discontinuation,
- d The Contractor shall not enter into any agreements for the supply of materials collected in the Program that would preclude the City's ability to redirect said material unless otherwise authorized by Director,
- e Redirected material shall be subject to the profit sharing provisions as provided in Section 13 4

If the City exercises its right to redirect processed materials, the Contractor shall continue to provide processed materials at a quality equal to the material Processing quality being provided prior to material redirection If the specific market or end-user of the redirected material rejects material because said material fails to meet material quality being provided prior to material redirection, the City reserves the right to either withhold payment for the material from the Contractor or to reduce the Contractor's compensation by the value of the rejected redirected material

ARTICLE 9.00 -- CONTRACTOR'S PUBLIC EDUCATION REQUIREMENTS

For the purposes of this article, "Public Education" shall mean any information (whether written or otherwise) directed by Contractor to recipients or potential recipients of Residential Recycling Services regarding the programs and services provided under this Agreement and shall be subject to the prior review and approval of the City

The Contractor's Public Awareness Campaign shall encourage the maximum level of citizen recycling, Program participation, and waste reduction Public Awareness Campaign activities must emphasize all materials to be collected and directions for preparation of materials At a minimum, the following public education activities are required of the Contractor

9 1 Public Education Budget Contractor shall be required to allocate or spend \$30,000 per calendar year on Program-related public education activities which have received prior written approval from the City. Any unspent funds at year end shall be deducted from Contractor's monthly payment pursuant to Article 13.00. City and Contractor may mutually agree to perform joint public education activities using all or some of the annual public education budget.

9 2 Public Education Activity Requirements

- a By September 1st of each year, commencing 1998, the Contractor must supply a public education plan for the following year. The City shall review and respond to the proposal within 45 days. Implementation of the plan would begin on January 1st of each year.
- b Contractor shall not perform any work on public education without prior written approval from the City. All materials shall be submitted in writing for review and approval. Written authorization by the City is required prior to final production of any public education materials.
- c All public education materials must be printed on 100% recycled paper with at least 50% post consumer recycled content with soy based (or other non-toxic) inks.
- d All public education materials must include the City's Oakland Recycles logo and the City's recycling hotline phone number.
- e All equipment, trucks, bins, must include the City's Oakland Recycles logo and the City's recycling hotline phone number.
- f All public education materials must include three languages whenever possible and/or needed (City will make determination) and materials must be made accessible to those with disabilities, in accordance with all applicable federal, state, and local laws and regulations, at Contractor's sole cost and expense.
- g All new collection vehicles shall include space for outdoor poster advertising to be utilized by the City.
- h The City shall oversee all press activities including press releases, press conferences, press kits, press packets and general press inquiries regarding the Program.
- i Public relations activities can not be applied to the public education budget.
- j All public relations, press and public outreach activities that involve the Program must have prior approval from the City whether or not they are being paid for from the public education budget.

Examples of public education activities which may be funded from the public education budget

- ✓ *Materials developed to respond and correct any sector or neighborhood specific public education problems (i.e. collection day confusion),*
- ✓ *Bin flyer distribution for all Single Family Dwelling bins up to twice per year with the distribution to last for two consecutive weeks,*
- ✓ *Posting of up to one poster per year at each Multi-Family recycling bin location,*
- ✓ *Multi-Family instructional information distributed to property owners/managers to be included with Multi-Family Dwelling rental agreements,*
- ✓ *Contribution to schools or other non-profit recycling public education projects such as Re-Festival or East Bay Depot*

Activities which shall not qualify as public education expenditures

- ✗ *All activities associated with operational needs such as but not limited to, uniforms, uniform maintenance, database management, recycling bin delivery, customer support,*
- ✗ *All activities which are solely self promotion such as signage promoting only the company's name,*
- ✗ *Tags for incorrect setouts,*

ARTICLE 10.00 -- MULTI-FAMILY DWELLING OUTREACH PROGRAM

The outreach program shall be sufficient to maximize participation by buildings residents. At a minimum, the following is required of the Contractor

- a Written notification of the availability of the service mailed to the building owner/s and managers of all non-participating dwellings annually and at least one follow-up phone or person-to-person contact. Contractor shall complete initial notification by April 1, 1998
- b Collection service shall be provided within two weeks of Program acceptance by the owner/manager of the Multi-Family Dwelling
- c Contractor delivery of recycling containers to Multi-Family Dwellings shall include concurrent delivery by Contractor of City-provided information brochure, Program posters, door hanger (placed on the door of every Multi-Family Dwelling provided service), and/or other Program information

- d Annually, Contractor shall be responsible for the distribution of City provided public outreach Program materials at the central collection location with information relating to, but not limited to, minimization of material Contaminants, minimization of scavenging, and other information to maximize material diversion

ARTICLE 11 00 -- PUBLIC ACCESS TO CONTRACTOR

11 1 Office Facilities Contractor shall establish and maintain a principal office in Oakland Regular office hours shall be, at a minimum, from 7 00 a m to 5 00 p m Monday through Friday and 8 00 a m to noon on Saturday, except holidays A representative of the Contractor shall be available during the stated office hours for communication with the City's Director and other City officials

11 2 Telephone Access Contractor shall provide and maintain a customer service/complaint telephone system of sufficient capacity with multi-lingual capability Contractor shall ensure sufficient staffing of a customer service/complaint telephone system at the following minimum hours 7 00 a m to 5 00 p m Monday through Friday and 8 00 a m to noon on Saturday, except holidays Contractor shall maintain a log of all customer service inquiries/complaints as described in Section 12 1

Contractor shall make available an answering machine or answering service for customer service/complaint calls outside of normal office hours All such calls shall be responded to and logged on the following work day

11 3 Saturday Service Any customer service problems that arise on Friday but are not resolved on Friday will be handled by Contractor's staff on Saturday Customer calls to Contractor's customer service telephone number on Saturday mornings will be answered by Contractor's staff and directed via radio to a truck in the field for immediate resolution

ARTICLE 12.00 -- REPORTING REQUIREMENTS

The Contractor shall be required to keep records and submit reports to comply with City reporting requirements The reports shall be in a format approved by the Director and similar to Attachment E and may be revised by the Director upon thirty (30) days notice to the Contractor In addition, Contractor shall be required to provide certified weight receipts for all materials collected through the Program Said weight receipts must be obtained by using a certified scale/s approved by the Director Additionally, material reporting for single family and multi-family collections shall be done separately by a methodology submitted by Contractor and approved by the Director

The City shall perform all monitoring and statistical evaluation of the Program with the cooperation of the Contractor The City may, at any time, undertake inspections of the Contractor's operations

12.1 Monthly Program Status Report The Contractor shall submit Monthly Program Status Reports for the duration of the Agreement commencing the first month of collection. These reports shall be due on or before the 20th day of each month. The Monthly Program Status Reports shall include but not be limited to the following:

- a Notification of any route changes and, if so, submittal of revised route maps,
- b Summaries of tonnages of all materials collected, by material, by route, except for used motor oil, which shall be measured by volume, for both Single Family and Multi-Family Dwelling,
- c Summaries of tonnages of all materials sold, by material, except for used motor oil, which shall be measured by volume,
- d Revenue generated for all materials sold, by material and sale price,
- e Summary of tonnages of all Contaminants/Residues or non-Recyclable Material collected and/or generated through material Processing, including a description of said material,
- f Weekly Single Family Participation - to be calculated as the number of set-outs divided by the number of eligible Single Family Dwellings for each route,
- g Monthly Single Family Participation - to be presented as a summary of the overall weekly route participation,
- h Monthly participation and new sign-ups of Multi-Family Dwellings including address and number of units for new and existing accounts, and date of container and public education material delivery for new accounts,
- i Summary of Multi-Family Dwellings which were contacted but declined the service, including contact person, telephone number, time and date of call, and reason for decline of service,
- j Monthly participation and new sign-ups of Small Business accounts including name of business and address for new and existing Small Business accounts, and date of container delivery for new accounts,
- k Summary of Small Businesses which were contacted but declined the service, including contact person, telephone number, time and date of call, and reason for decline of service,
- l Daily summary of replacement recycling containers and requests for replacement containers including the following:
 - 1 Names and addresses of eligible Customers who request replacement container(s)
 - 2 The date of request for replacement
 - 3 The quantity of containers requested
 - 4 The reason for replacement by category (i.e., lost, stolen, damaged or destroyed)
 - 5 The date of replacement for each request
 - 6 A summary report of 1 through 5,
- m Daily summary of missed collection including the following:
 - 1 Names and addresses of eligible Customers who request missed collection service

- 2 Date of request
- 3 Date of collecting missed pick-ups
- 4 Reason for missed collection,
- n Daily summary of refused collection including the following
 - 1 Addresses of eligible Customers whose collection was refused
 - 2 Date of refusal
 - 3 Reason for collection refusal
 - 4 Follow-up actions taken by Contractor,
- o Daily log of telephone calls received, and Contractor response made, including the following
 - 1 Missed collection request
 - 2 Complaints
 - 3 Service calls
 - 4 Recycling container replacement
 - 5 Recycling program information
 - 6 Other,
- p Detail of all public awareness campaign activities and related expenditures including copies of all invoices

12 2 Quarterly Program Status Report The Contractor shall submit Quarterly Program Status Reports (using calendar quarters) within thirty (30) working days from the end of each quarter. The Quarterly Program Status Reports shall include but not be limited to the following

- a Summary of tonnages recovered by material, by route, except for used motor oil, which shall be measured by volume, for both Single Family and Multi-Family Dwellings,
- b Summary of tonnages recovered by material, except for used motor oil, which shall be measured by volume, for both Single Family and Multi-Family Dwellings,
- c Summary of tonnages of all materials sold, by material, except for used motor oil, which shall be measured by volume,
- d Summary of revenue generated for all materials sold, by material,
- e Summary of container replacement information,
- f Summary of missed or refused collection information,
- g Discussion of problems encountered and noteworthy experiences in Program operation, including recommendations for Program modification,
- h Discussion of public awareness campaign efforts and impacts of said efforts and public education budget expenditures including copies of all invoices,
- i List of vehicles in service and license plate number and vehicle identification number

12 3 Bi-Annual Program Status Report The Contractor shall submit a Bi-Annual Program Status Report within thirty (30) working days of June 30. The reporting period shall be from the immediately preceding January 1 to June 30. The Bi-Annual Program Status Report shall include

- a If Contractor does not operate a separate collection vehicle for Multi-Family Dwellings, an estimate of Multi-Family Dwelling participation rates (set-out weights per dwelling unit) using a methodology agreeable to the City,
- b If Contractor does not operate a separate collection vehicle for Small Businesses, an estimate of Small Business participation rates (set-out weights per participating Small Business) using a methodology agreeable to the City

12 4 Annual Program Status Report The Contractor shall submit Annual Program Status Reports within thirty (30) working days from the end of the calendar year being reported. The Annual Program Status Report shall include but not be limited to the following

- a A discussion of public awareness campaign activities and their impact on participation and recovered volumes,
- b A summary of public education expenditures,
- c A summary of the quantity of recycling containers delivered and remaining in stock,
- d Route maps (in a format to be mutually agreed upon by the City and Contractor) for all routes operated by Contractor to fulfill the obligations of this Agreement,
 - 1 Contractor shall submit route maps for all planned routes prior to implementation of Program services,
 - 2 If during subsequent years, there are no route revisions, Contractor shall not be required to submit new route maps,
- e If Contractor does not operate a separate collection vehicle for Multi-Family Dwellings, an estimate of Multi-Family Dwelling participation rates (set-out weights per dwelling unit) using a methodology agreeable to the City,
- f If Contractor does not operate a separate collection vehicle for Small Businesses, an estimate of Small Business participation rates (set-out weights per participating Small Business) using a methodology agreeable to the City,
- g Dates and locations of all Small Business events attended,
- h A correction and listing of any errors or omissions in Contractor's monthly and/or quarterly reports,
- i Recommendations for modifications and/or improvements to the Program

12 5 Other Reports The City may, from time to time, request additional information reasonably related to the Program from the Contractor. Contractor shall provide City with the information within two weeks of request or at a mutually agreed upon time. Failure to provide such information shall result in the withholding of all compensation until the information is received or, at the discretion of the City, the termination of the Agreement pursuant to the provisions of Article 14 00. Access to, and release of information shall be subject to the California Public Records Act and other applicable law governing such access and/or release.

ARTICLE 13 00 – PAYMENT TO CONTRACTOR

Monthly payments by the City to the Contractor shall be based on the following

- a The Contractor's monthly Household Rate times the number of occupied Single Family Dwellings within the Service Area
- b The Contractor's monthly Household Rate times the number of multi-family units served during the preceding month Compensation shall be prorated for all multi-family units receiving service for less than a full month Receipt of collection service shall be demonstrated by the placement and service of recycling containers for Targeted Recyclable Materials in designated areas within the proper confines of the Multi-Family building and consistent with the agreement of building ownership or management Distribution of applicable Program outreach materials must occur prior to or concurrent to the delivery of recycling containers
- c The value of any processed material redirected by the City for market development purposes as determined by the product of the number of tons and the material value determined pursuant to Section 13 4, less any adjustment for rejected material
- d The monthly profit sharing calculation
- e Deductions for the assessment of any liquidated damages
- f Deductions for obligations of the Contractor which the City assumed pursuant to this Agreement
- g Small Business rate subsidy, if any, times the number of Small Business customers The number of Small Business customers shall be prorated to a weekly basis if said service is provided for less than a full month
- h The number of oil filters collected times a per-filter rate to agreed upon by City and Contractor by the Effective Date

Contractor shall receive payment from City within thirty (30) days after the City receives a correct invoice City shall contact Contractor within ten (10) business days of invoice receipt if the City disputes any portion of the amounts set forth in Contractor's monthly billing invoice The City shall pay those amounts not in dispute, while requesting either clarification or back-up information for those amounts in dispute Once the dispute is resolved, City shall pay the mutually agreed upon amount within thirty (30) calendar days

13 1 Monthly Household Rate For Year One of the Agreement, Contractor shall receive \$2 33 each month for each Single Family Dwelling in the Service Area and each unit in a Multi-Family Dwelling in the Service Area served

13 2 Annual Adjustments to Contractor's Payment Contractor's monthly Household Rate shall be adjusted upward or downward on January 1 of each year of the Agreement beginning January 1, 1999 as provided in this Section

- a The monthly household rate shall be annually adjusted by a percentage change determined by the following calculation

- Eighty percent (80%) of the annual net percentage change in the Consumer Price Index for the months of August,

The annual net CPI percentage change (NetCPI) shall be calculated by the following formula

$$\text{NetCPI} = (((\text{CPI}_{(t)} - \text{CPI}_{(t-1)}) / \text{CPI}_{(t-1)}) * 80\%)$$

Where

$\text{CPI}_{(t)}$ = Index value as of the August immediately preceding the January in which the adjustment occurs, and,

$\text{CPI}_{(t-1)}$ = Index value as of the August of the year immediately preceding the year used for $\text{CPI}_{(t)}$

The monthly household rate paid to the Contractor shall be adjusted by the percentage as calculated above and the new rates paid shall remain in effect until the next annual adjustment

- b Adjustments to Contractor's monthly Household Rate will be effective January 1
- c Adjustment to the payments shall be rounded to the nearest one-tenth of one percent, i.e., 0.001
- d The annual increase or decrease to the Contractor's per unit rate shall not exceed, in any event, five percent (5%) in any one year. Increases above five percent (5%) may not be applied to future periods

13.3 Other Adjustments to Contractor's Payment

- a If Contractor's scope of service is modified by the action of changes in Federal and/or State laws and regulations with respect to the termination of used motor oil collection, Contractor's per unit payment will be reduced equal to the amount of the incremental cost of providing said service, adjusted for inflation in accordance with Section 13.2, or at a mutually agreed upon amount
- b Should Contractor receive payment from the State of California (pursuant to the Public Resources Code 14549.6 (a) or other incentive payments made through the California Beverage Container Recycling and Litter Reduction Act), said funds shall be provided

to the City for public education and Program outreach activities or for other activities mutually agreeable to City and Contractor

- c The number of Single Family Dwellings may be adjusted each month based on evidence acceptable to the City that the dwelling(s) in question is (i) newly constructed, and (ii) occupied. Evidence which is acceptable to the City is a Certificate of Occupancy as issued by the City's Community and Economic Development Agency. Compensation shall be prorated for all new Single Family Dwellings receiving service for less than a full month. The intent of this sub-Section is to compensate Contractor for providing service to newly constructed and occupied dwellings located within the Oakland hills fire area.

13.4 Profit Sharing On a monthly basis, the City shall perform profit sharing calculations on each Targeted Recyclable Material. This shall be calculated on the basis of one-half of any amount that exceeds $MPI - (SV * 1.5)$, where

MPI = the material's Market Price Indicator will be determined each month from mid-range prices published in one of the following two journals for the following materials:

- a *Official Board Markets (The Yellow Sheet)* (OBM) for the San Francisco area. OBM will be used for ONP (#6 & #8), MP #1, OCC #11,
- b *Waste Age's Recycling Times* (RT) for the West region. Prices to be used are those paid by End-Users. RT will be used for Magazine Paper, Aluminum UBCs and Foil, PET, HDPE, color-sorted Glass, and Steel Cans.

For polycoated containers, mixed glass, Plastic Containers, and used motor oil not listed above or not included in OBM or RT, the City shall have the option to either:

- a Use Contractor's actual revenue per ton received for the commodity, or
- b Survey local end-users for prices paid.

SV = The salvage value of the material used in the Salvage Revenue Worksheet of the Contractor's proposal to the City incorporated herein by reference and attached as Attachment G.

If $MPI > ((SV + (SV * 0.5)))$, then $(MPI - (SV + (SV * 0.5))) / 2$ = Per ton payment by the Contractor to the City,

Should Contractor market any Targeted Recyclables Materials in a manner where the City is unable to perform Profit Sharing calculations pursuant to this Section, City and Contractor shall meet and agree to alternative and equitable methods to calculate Profit Sharing. If said alternative methodology cannot be agreed upon within thirty (30) calendar

days, City shall have the right to unilaterally impose alternative Profit Sharing which it determines is an equitable agreement

Profit sharing payments, as described above, will be deducted from the Contractor's monthly payment

ARTICLE 14 00 -- DEFAULTS AND REMEDIES

14 1 Events of Default Each of the following shall constitute an event of default hereunder

- a Contractor fails to perform its obligations under this Agreement or future modifications of this Agreement and the failure or refusal of Contractor to perform as required by this Agreement is not cured within two (2) business days after receiving notice from the City specifying the breach, provided that where Contractor demonstrates to the City's reasonable satisfaction that such breach cannot be cured within such two (2) day period, Contractor shall not be in default of this Agreement if Contractor shall have commenced action required to cure the particular breach promptly in light of the circumstances, but in any event within two (2) days after such notice and it continues such action diligently until completed,
- b Any written representation or disclosure made to the City by Contractor in connection with or as an inducement to entering into this Agreement or any modification to this Agreement proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement,
- c There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limitation its vehicles, maintenance or office facilities, or Processing Facilities or any part thereof, of such proportion as to substantially impair Contractor's ability to perform under this Agreement, and which cannot be released, bonded or otherwise lifted within forty-eight (48) hours excluding weekend and holidays,
- d Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief or other similar law now or hereafter in effect, or consents to the appointment or taking of possession by a receiver, liquidator, assignee (other than as part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator or similar official of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due, or shall take any action in furtherance of any of the foregoing,

- e A court having jurisdiction shall enter a decree or order for relief in respect of Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Contractor or for any part of Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor,
- f Contractor fails to provide reasonable assurances of performance as required under this Article 14 00 of this Agreement,
- g Contractor fails to substantially adhere to the implementation plan approved by the City under Section 3 4 1 5, and
- h Contractor or any permitted subcontractor fails to comply with the nondiscrimination clause of this Agreement set forth in Section 18 3

Paragraph (g) and (h) are subject to the same notice and cure provisions as set forth in paragraph (a) above

14 2 Remedies

14 2 1 Termination Upon an event of Default as defined in Section 14 1, the City shall have the right to terminate this Agreement upon a notice of not less than five (5) days, provided such termination shall be authorized by the City Council or a designee authorized by the City Council, but without the need for any hearing, suit or legal action

14 2 2 Possession of Property Upon Default In the event of Contractor's default, the City shall have the right to take possession of any and all of Contractor's land, equipment, facilities and other property reasonably necessary for the provision of services hereunder and the billing and collection of fees for those services. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of services, which may include the award of an agreement to another service provider. If the City retains possession thereof after the period of time for which Contractor has already been paid by means of bills issued in advance of providing service for the class of service involved, Contractor shall be entitled to the reasonable rental value of such property, which shall be offset against the damages due the City for Contractor's default. Contractor agrees that it will fully cooperate with the City to effect the transfer of possession of property for the City's use. If the City so requests, Contractor shall keep in good repair all such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain property in operational condition. The City may immediately engage all or any personnel necessary for the provision of services, including if the City so desires employees previously employed by Contractor. Contractor further agrees, if the City so requests, to assist the City in securing the services of any or all management or office personnel

employed by Contractor whose skills are reasonable necessary for the continuation of services. The City agrees that it assumes complete responsibility for the proper, normal use of such equipment and facilities while in its possession. Contractor covenants that it shall not create or impose any lien, charge or encumbrance on its facilities or equipment during the term of this Agreement that will prevent the City's exercise of rights under this Section 14 2 2. Contractor agrees that the City's exercise of its rights under this section (i) does not constitute a taking of private property for which compensation must be paid, (ii) will not create any liability on the part of the City to Contractor other than the payment of reasonable rental value as provided for in this subsection, (iii) does not exempt Contractor from the indemnity provisions of Article 17 00 which are meant to extend to circumstances arising under this Section. The City has no obligation to maintain possession of Contractor's property for continued use for any period of time and may at any time at its sole discretion relinquish possession to Contractor.

14 2 3 Direct and Consequential Damages Contractor shall be liable to City for all direct and consequential damages arising out of Contractor's default.

14 2 4 Liquidated Damages

14 2 4 1 General The City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticality of ascertaining damages include, but are not limited to, the fact that (i) substantial damage results to members of the public who are denied services or denied quality or reliable service, (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms, (iii) that City contracted services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms, and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

14 2 4 2 Service Performance Standards, Liquidated Damages for Failure to Meet Standards The parties further acknowledge that consistent, reliable Residential Recycling Services including collection, Processing and marketing are of utmost importance to the City and that the City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City


and its Customers will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article 14.00, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. The parties further agree that during the start up of services contemplated by this Agreement, situations may occur which are best dealt with in a manner different than herein provided. Between the Effective Date and April 1, 1998, the City and Contractor agree to meet and resolve problems associated with the implementation of services. In consideration of Contractor's agreement to this provision, the City agrees to not assess liquidated damages during this implementation period. If in the future there shall be a similar implementation period required to commence a new level or type of service, the City and Contractor agree to discuss the suspension of liquidated damages for a specified period of time. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

<i>Incident</i>	<i>Liquidated Damage</i>
a Commencement of residential collection prior to 6 00 a m (without authorization by Director)	\$25 00 per incident
b Failure to collect missed Recyclables within twenty four (24) hours, or next business day, after a missed pick-up order is given to Contractor	\$25 00 per incident and \$100 00 per incident if within 10 business days of prior incident occurring at same Single or Multi-Family Dwelling, City Facility, or Small Business
c Two (2) consecutive failures to collect Recyclables at a dwelling with qualifying special handling services per Section 4 3 3	\$100 00 per incident and \$250 00 per incident if within 20 business days of prior incident occurring at same dwelling
d Collection from Single Family Dwellings on other than day previously specified (Except for missed pick-up collections or except when authorized by Director)	\$10 00 each dwelling

e	Failure to provide quality of performance required after notification to correct performance factors such as non-replacement of recycling containers to designated locations, spilling, not closing gates, crossing or damaging planted areas, or similar violations	\$25 00 per incident and \$100 00 per incident if within ten (10) business days occurring at same Single or Multi-Family Dwelling, City Facility, or Small Business
f	Failure to keep collection vehicles clean	\$25 00 per incident and \$100 00 per incident if within five (5) business days of prior incident
g	Driver or driver's helper not in uniform	\$25 00 per incident and \$100 00 per incident if within five (5) business days of prior incident
h	Failure to provide required reports	\$100 00 per report item per incident
i	Disposing of Recyclable Material without authorization from the Director	\$1,000 00 per incident
j	Failure to return Customer phone calls within twenty four (24) hours, or next business day, after a Customer leaves a message or City leaves a message (including via fax)	\$25 00 per incident and \$100 00 per incident if within 10 business days of prior incident occurring at same Single or Multi-Family Dwelling, City Facility, or Small Business
k	Failure to deliver recycling container within ten (10) business days of request	\$25 00 per incident
l	Failure to implement or maintain the vector control management program specified in Attachment K	\$25 00 per day
m	Failure to notify City of any changes in the CRV buyback hours of operation	\$25 00 per day
n	Failure to complete delivery of all second 18-gallon containers within timeframe specified in implementation plan (Attachment C)	\$100 00 per day

o City and Contractor agree to develop additional standards and liquidated damages pursuant to this Article 14 00 for issues such as telephone hold times, busy signals, and other customer service issues within one year of execution of this Agreement

Contractor Initial Here 

City Initial Here 

14 2 5 Deduction from Payments because of Contractor's Failure to Make

Collections In addition to the penalties and fines, in the event the Contractor, for any reason, fails to perform the collections called for in the Agreement for any period, with the result that any portion of the scheduled collection is not completed within a given calendar week, the Contractor shall not be paid for the work not performed. Whenever such failure occurs, the Director shall deduct, for such non-performance, a reasonable amount from the Contractor's next monthly payment(s), which amount shall be based on, among other factors, the number of residences from which collections have not been made, the duration of such failure of collection, the additive and deductive adjustments that would have been applied to such prices had the collections been made, and special costs including administrative expenses incurred by the City as a consequence of such failure.

Furthermore, the Director may impose additional financial penalties for repetitious acts or behavior contrary to the service and performance standards delineated in this Agreement. Repetitious acts or behavior contrary to this Agreement's service and performance standards shall include, but not be limited to, those acts or service omissions pursuant to Section 14 2 4 2. The Director will not capriciously impose additional financial penalties and will not impose penalties for any given month exceeding ten (10) percent of the Contractor's monthly compensation for the month in which the penalties were assessed. Any penalties and fines imposed pursuant to this Section shall be in addition to any other remedies available to the City.

14 2 5 1 Notice to Contractor The City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints. Prior to assessing liquidated damages, the City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of the City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with the Director. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incidents(s)/non-performance. The Director will provide Contractor with a written explanation of his/her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the Director shall be final unless appealed in writing to the City Manager within ten (10) calendar days with an explanation of the basis for appeal and submittal of a non-refundable Five Hundred Dollar (\$500) appeal fee.

14 2 5 2 Amount The City may assess liquidated damages for each business day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

14 2 6 Specific Performance By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, and the lead time required to effect alternative

service, if the remedy of damages for a breach hereof by Contractor is inadequate, the City shall be entitled to injunctive relief compelling the specific performance of Contractor's obligation hereunder

14 2 7 Right to Demand Assurances of Performance If Contractor (i) is the subject of any labor unrest including work stoppage or slow down, sick out, picketing or other concerted job actions, (ii) appears in the reasonable judgment of the City to be unable to regularly pay bills as they become due, or (iii) is the subject of a civil or criminal judgment or order entered for violations of environmental laws, and the City believes in good faith that Contractor's ability to perform has been placed in substantial jeopardy, the City may at its option, in addition to all of the remedies that it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance that the City believes is reasonably necessary in the circumstances

14 2 8 City's Remedies Cumulative The City's right to terminate this Agreement, the City's right to take possession of Contractor's properties, the City's right to impose liquidated damages on Contractor, and all other remedies of this Article are cumulative, not exclusive, and the City's termination of this Agreement or exercise of one or more rights shall not constitute an election of remedies All remedies provided in this Article shall be in addition to any and all other legal and equitable rights and remedies which the City may have

14 3 Excuse from Performance

14 3 1 Force Majeure Neither Contractor nor the City shall be excused from the performance of its obligation under this Agreement except where a party's failure to perform is due to an event of Force Majeure, as defined in this Agreement

14 3 2 Obligation to Restore Ability to Perform Any suspension of performance by a party pursuant to this Section shall be only to the extent, and for a period of no longer duration than, required by the nature of the event, and the party claiming excuse from obligation shall use its best efforts in an expeditious and commercially reasonable manner to remedy its inability to perform, and mitigate damages that may occur as result of the event

14 3 3 Notice The party claiming excuse shall deliver to the other party a written notice of intent to claim excuse from performance under this Agreement by reason of an event of Force Majeure Notice required by this Section shall be given promptly in light of the circumstances but in any event not later than five (5) calendar days after the occurrence of the event of Force Majeure Such notice shall describe in detail the event of Force Majeure claimed, the services impacted by the claimed event of Force Majeure, the expected length of time that the party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform, and such other information as the other party reasonably requests

14 3 4 City's Right in the Event of Force Majeure The partial or complete interruption or discontinuance of Contractor's service caused by an event of Force Majeure shall not constitute an event of default under this Agreement. Notwithstanding the foregoing (i) the City shall have the right to assume possession of Contractor's facilities and equipment in accordance with Section 14 2 2 of this Agreement in the event of non-performance excused by Force Majeure, (ii) if Contractor's excuse from performance for reason of Force Majeure continues for a period of thirty (30) days or more, the City shall have the right in its sole discretion to immediately terminate this Agreement provided that a third party is ready, willing and able to commence performance, in which case the City still shall have the right to assume possession of Contractor's property in accordance with Section 14 2 2.

14 4 City's Right in the Event of Change in Law In the event of a material change in federal or state law which substantially alters City's duties to provide for the services set forth in this Agreement, the City shall have the right to modify this Agreement to curtail or increase the services affected by the change in law, or to terminate this Agreement entirely. The City's right to terminate this Agreement shall be limited to circumstances under which a material change in federal or state law obviates the City's right to provide the services hereunder.

14 5 Dispute Resolution The City and Contractor agree that the only issues to be mediated pursuant to this Section shall be (i) a determination of adjustment to the Household Rate due to Contractor for changes in the scope of work to be performed under this Agreement in accordance with Section 4 7, and (ii) failure of the City to adequately adjust the Household Rate pursuant to Article 13 00 of this Agreement.

14 5 1 Meet and Confer In the event of disputes described in Section 14 5, the parties agree that they promptly will meet and confer to attempt to resolve the matter between themselves.

14 5 2 Mediation In the event that a dispute specified in Section 14 5 cannot be resolved satisfactorily between the parties, the City and Contractor agree that such disputes shall be submitted to mandatory, non-binding mediation by a mutually agreed upon independent third party. If the dispute is not promptly and satisfactorily resolved through mediation, the parties may pursue available legal remedies. The cost of mediation shall be shared equally between the parties.

ARTICLE 15 00 -- PERFORMANCE BOND

15 1 Performance Bond or Alternative Security By October 1, 1997, Contractor shall provide the City with a fully prepaid Performance Bond substantially in the form of Attachment B, in the amount of five hundred thousand dollars (\$500,000) payable to the City, executed as surety by a corporation authorized to issue surety bonds in the State of California, which corporation is acceptable to the City, and/or by providing as Alternative Security (i) a fully prepaid irrevocable letter of credit in form and substance satisfactory to the City and issued by a financial institution acceptable to the City, (ii) a certificate of deposit in the name of the City with a financial institution acceptable to the

City, or (iii) an alternate instrument securing Contractor's performance which is acceptable to the City at its sole discretion, provided that in all events the Performance Bond or Alternative Security, alone or in combination, secure an amount at least equal to the Contractor's cost to provide services for three (3) months. Such Performance Bond or Alternative Security shall be either (i) expressly provided for the full term of the Agreement, or (ii) provided for consecutive annual terms, in which case Contractor shall deliver to the City an annual Performance Bond or Alternative Security in a form acceptable to the City no less than sixty (60) days prior to the expiration of the preceding Performance Bond or Alternative Security. The City may require Contractor to increase the face amount of the Performance Bond or Alternative Security to maintain said Bond or Security in an amount at least equal to the Contractor's cost to provide services for three (3) months. Nothing in this subsection shall in any way obligate the City to accept a letter of credit, certificate of deposit or other form of Alternative Security in lieu of the Performance Bond.

15.2 City's Right to Draw Against Performance Bond The City shall have the right to draw against the Performance Bond for an event of default as set forth in Article 14.00 if Contractor has not cured the event of default after expiration of any applicable cure period.

15.2.1 Contractor's Obligation to Replenish Performance Bond Contractor covenants that it shall not dispute with its bonding company the City's right to draw upon the Performance Bond if Contractor's payments become more than thirty (30) days delinquent or if after reasonable notice, Contractor is assessed liquidated damages for acts or omissions set forth in Section 14.2.4.2 and Contractor has not cured the event of default after expiration of any applicable cure period. Within five (5) working days of receipt of notice from the City, Contractor shall renew or replace such sums as needed to replenish the Performance Bond, or, if applicable, the Alternative Security.

15.3 Termination of Performance Bond Under no circumstances shall Contractor change, or allow the expiration of, the Performance Bond provided under this Agreement without written notice to the City and written authorization from the City to allow such change or expiration. If Contractor shall fully perform the covenants, promises, undertakings and obligations contracted by Contractor to be performed under this Agreement, then the City shall not draw against the Performance Bond. Contractor's obligation to maintain the Performance Bond shall terminate and be canceled upon the completion of all of Contractor's obligations under this Agreement. In the event of Contractor's default, the Performance Bond shall remain in effect until the City or its designated agent has completed all of Contractor's obligations under this Agreement. City shall execute and deliver to Contractor or Contractor's surety promptly upon the completion of all of Contractor's obligations under this Agreement, such certificates or other documents as either of them may reasonably request for the purpose of terminating and canceling the Performance Bond. Absent such certificates or documents executed by the City, the Performance Bond shall not be terminated or canceled.

ARTICLE 16.00 -- INSURANCE

16.1 Contractor's Agreement to Provide Insurance On or before the Effective Date, Contractor shall procure and keep in force for the Service Term or any Extended Term, or as

otherwise specified below, the insurance coverages set forth below, with insurers with a Best rating of "A", or better, and class eight (8) or larger and under forms of policies satisfactory in all respects to the City Contractor shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this Article

16 2 Comprehensive General Liability Insurance Contractor, at its own expense, shall maintain Commercial General Liability Insurance (or its equivalent), on an occurrence basis, including but not limited to, Personal Injury, Broad Form Property Damage, Contractual Liability and Products and Completed Operations Coverages The policy shall be endorsed to include the following

- a All coverages shall be primary insurance with regard to the work performed hereunder and each policy shall be endorsed to waive subrogation against the City and all other additional insureds
- b Limits of liability
\$1,000,000 each occurrence, annual aggregate and
\$1,000,000 annual aggregate for products-completed operations
- c Contractor shall immediately notify the City when asserted Claims are greater than \$500,000 If requested by the City, Contractor shall immediately purchase additional umbrella coverage to restore coverage limits specified above

16 3 Automobile Liability Insurance Contractor, at its own expense, shall maintain automobile liability insurance for the period covered by this Agreement, including any extensions thereto, in the amount of One Million Dollars (\$1,000,000) per occurrence combined single limit coverage for personal and bodily injury and property damage Such coverage shall include, but shall not be limited to, the use of owned, non-owned and hired vehicles and equipment used by Contractor in the performance of its activities contemplated under this Agreement

16 4 Workers' Compensation Insurance Contractor, at its own expense, shall carry and maintain full Workers' Compensation Insurance, as required by the California Labor Code, and Employer's Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) per accident Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code Contractor shall comply with the provisions of Section 3700 of the Labor Code before commencing the performance of the work under this Agreement

16 5 Environmental Impairment Liability Insurance Contractor, at its own expense, shall carry and maintain environmental impairment liability insurance for the Service Term or any Extended Term, including any extensions thereto, in the amount of One Million Dollars (\$1,000,000) per loss and in annual aggregate, covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants Such coverage shall, if commercially available, without involvement of the City, automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants The policy shall stipulate that this insurance is primary insurance and that no other insurance carried by the City will be called

upon to contribute to a loss suffered by Contractor hereunder and waive subrogation against the City and other additional insureds

16 6 Additional Insureds The City, its officers, employees, appointed and elected officials, agents and volunteers (collectively "Insured Parties") shall be named as additional insureds for all liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied or used by the Contractor, and vehicles and equipment owned, occupied, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Any failure to comply with reporting or other provisions of the policies including breaches of warranties by Contractor, shall not affect coverage provided to the Insured Parties.

16 7 Deductibles and Self-Insured Retentions In the event Contractor is self-insured as to Workers' Compensation, it shall furnish a Certificate of Permission to Self-Insure signed by the California Department of Industrial Relations, Administration of Self Insurance.

16 8 City's Right to Cure If Contractor fails to procure and maintain any insurance required by this Agreement, City may procure and maintain, at Contractor's expense, such insurance as it may deem proper up to the policy limits referenced above and deduct the cost thereof from any monies due Contractor or recover the cost thereof from Contractor. The City will provide Contractor with concurrent notice of its intent to purchase substitute insurance. Alternatively, the City may, at its option, terminate this Agreement effective on the date of such lapse of insurance if Contractor has not cured the event of default after expiration of any applicable cure period.

16 9 Annual Aggregate Limit Should any of the required insurance to be provided according to Sections 16 2 through 16 5 change to or be provided under a form of coverage that includes a general annual aggregate limit, and provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above.

16 10 Cancellation and Duration of Coverage Each policy shall be endorsed to provide that the City shall be given at least sixty (60) days prior written notice of cancellation, termination or material reduction of such insurance coverage. The above coverages shall be maintained during the Service Term or any Extended Term.

16 11 Interpretation All endorsements, certificates, forms, coverages and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

16 12 Companies Each company providing insurance shall be an "admitted insurer" or "approved non-admitted insurer" subject to the jurisdiction of the California Insurance Commissioner.

ARTICLE 17.00 -- INDEMNITY

17 1 Contractor's Duty to Indemnify City Contractor shall defend with counsel approved by the City, indemnify and hold harmless the City and the City's officers, agents, employees, council members, appointed and elected officials, successors, and assigns (collectively "Indemnitees") from any and all claims, demands, damages, costs, expenses (including without limitation consultants, expert witnesses and attorney services/fees), special and consequential damages, natural resource damages, punitive damages, fines, penalties, suits or actions, causes of action, legal or administrative proceedings, demands, debts, liens (collectively referred to herein as "Claims") and other expenses of any kind and description including but not limited to, injury to or death of any and all persons (including but not limited to Contractor, its agents, employees, subcontractors and their successors and assigns as well as the City or the City's agents, and all third parties), and/or on account of all property damage of any kind, whether tangible or intangible, including loss of use resulting therefrom, arising in connection with the work performed pursuant to this Agreement or caused or occasioned in whole or in part by reason of the presence of the Contractor, Subcontractor, Agents, Employees, or their proximity to the property of the City, or any other property upon which the Contractor, its Subcontractors, Agents, Employees are performing any work called for in connection with this Agreement Contractor's duty to defend, indemnify and hold harmless the Indemnitees arising during the Service Term, and as it may be extended, shall survive the expiration or earlier termination of this Agreement

Without limiting the generality of the foregoing, Contractor's indemnification shall include personal injury, death or damage to property (including contamination), product liability, violation of federal, state or local law, or any other Claim whatsoever connected with the activities of Contractor, its subcontractors, agents, and/or employees under this Agreement or on account of the performance or character of the work performed hereunder, including unforeseen difficulties, accidents, occurrences or omissions, including but not limited to, any failure to exclude Hazardous Waste from collection or processing, any Claim the Contractor, or its agents, subcontractors, directors, officers, employees or representatives, has breached an express or implied warranty of merchantability or fitness for particular use or any other warranty relating to any materials marketed pursuant to this Agreement, or any Claim that any of them has violated any license, copyright, or other limitation on Contractor's use of computer software in connection with Contractor's performance of services under this Agreement, any Claim that the Indemnitees have awarded Contractor an Agreement which allegedly violates state or federal law under then current judicial precedent, and any Claim arising from City's performance under this Agreement

17 2 City to Provide Notice of Claims The City shall provide Contractor with prompt notice of any Claims received by it, and Contractor may assume the defense of any Claim, with counsel approved by the City, and Contractor shall have authority to settle any Claim provided such settlement fully releases and extinguishes Indemnitees' alleged liability under the Claim and such settlement is approved by the City Where a conflict of interest exists between the Indemnitees and Contractor with respect to a Claim which is covered by Section 17 1, Contractor shall provide the Indemnitees with independent legal counsel of the Indemnitees' choice, at Contractor's expense

17 3 Hazardous Waste Indemnification Contractor shall indemnify, defend with Counsel approved by the City, protect and hold harmless the Indemnitees against all Claims, of any kind whatsoever paid, incurred or suffered by, or asserted against Indemnitees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where Contractor stores or disposes materials pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U S C Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify Indemnitees from liability. The City and Contractor desire to leave no doubts as to their respective roles, and that by entering into this Agreement, the City is not thereby becoming a "generator" or an "arranger" as those terms are used in CERCLA Section 107 (a) (3), and that it is Contractor, not the City, which is "arranging for" the collection from residents and others in the City, and the transport, processing and marketing of Targeted Recyclable Material which may contain hazardous substances. The City and Contractor agree that it is Contractor, and not the City, which will select the transfer station, disposal facility, material recovery facility or processing facility destination of the non-Recyclable waste which Contractor may have collected, that the City has not, and, by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection and disposal of such waste, and nothing in this Agreement, or other action of the City shall be construed to place title to such waste in Contractor, the parties recognizing that whatever, if any, title Contractor may gain to such waste is by operation of law, and is not the result of this Agreement.

17 4 AB 939 Indemnification Contractor agrees to defend, with Counsel approved by the City, indemnify and hold harmless the Indemnitees against all fines and/or penalties imposed by the California Integrated Waste Management Board, if Contractor fails or refuses to provide information specified in Attachment E and prevents the City from submitting reports required by AB 939 in a timely manner.

ARTICLE 18 00 -- GENERAL PROVISIONS

18 1 Subcontracting Contractor shall not engage any subcontractors to perform any of the services required of it under this Agreement without the prior written approval of the City. Contractor shall notify the City no later than ninety (90) days prior to the date on which it proposes to enter into a subcontract, providing the City with all information it requests with respect to the proposed subcontractor. City may approve or reject any proposed subcontract and/or subcontractor in its sole discretion if the proposed subcontract replaces essential services to be performed by Contractor pursuant to Sections 4 3 through 4 6 and Article 7 00 of this Agreement. City's consent to a subcontract and/or subcontractor shall not be unreasonably withheld as to other aspects of this Agreement which are not deemed to involve essential services to the City.

18 2 Coordination with Other City Services The City will assist Contractor in coordinating routing and scheduling matters with other City services, such as Solid Waste and yard waste collection and street sweeping. Contractor is responsible for all costs associated with

implementing and maintaining day-of-service route changes should the Solid Waste collection routes be changed by the City's Franchised Solid Waste and Yard Waste Contractor

18 3 Nondiscrimination

18 3 1 Equal Employment Practices Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws During the term of this Agreement, Contractor agrees as follows

- a Contractor and any permitted subcontractors shall not discriminate against any employee or applicant for employment because of sex, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or physical handicap The Contractor and Contractor's subcontractors shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their sex, sexual preference, race, creed, color, national origin, AIDS, ARC, or physical handicap Such action shall include, but not be limited to, the following employment, upgrading, demotion or transfer, recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship The Contractor agrees to post, in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause
- b Contractor and any permitted subcontractors shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to sex, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or physical handicap
- c If applicable, Contractor shall send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment

18 3 2 Treatment of Customers In performing this Agreement, Contractor shall not discriminate against Customers or potential Customers because of sex, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or physical handicap

18 4 Compliance with the City's MBE/WBE and SLBE Programs Contractor shall achieve, or document a good faith effort to achieve, thirty percent (30%) Minority Business Enterprise (MBE) participation, five percent (5%) Women Business Enterprise (WBE) participation, and twenty percent (20%) Small Local Business participation of the services performed by it under this Agreement Contractor shall comply with the guidelines of the *City's Minority and Women*

Business Enterprise and *Small Local Business Enterprise* programs, attached hereto as Attachment H and incorporated by reference herein

For the purposes of determining MBE, WBE, and SLBE participation, the City will calculate participation based on a "value added" approach for the sale of Recyclables. Specifically, if Contractor desires to receive credit for the sale of Recyclables to a MBE, WBE, and/or SLBE processor, Contractor will be credited 20% of the sale amount of Targeted Recyclable Materials, as follows. The dollar amount of credit toward MBE, WBE, and/or SLBE participation will be calculated as $(0.20) \times (\$S)$, where $\$S$ is the sell price that Contractor receives for selling Targeted Recyclable Materials to a MBE, WBE, and/or SLBE processor.

18.5 Compliance with City's Affirmative Action Employment and Local Employment Programs Contractor shall comply or make a good faith effort to comply with the requirement that forty percent (40%) of the hours shall be worked by Oakland residents on a job-category by job-category basis as described in Attachment I, *City of Oakland and Redevelopment Agency Local Employment Program for Public Works Contracts*. In addition, Contractor shall comply with the requirements of the City's *Affirmative Action Employment Program*, also described in Attachment I.

18.6 Contractor An Independent Contractor It is expressly agreed that in the performance of the services under this Agreement, the Contractor shall be, and is, an independent contractor, and is not an agent or employee of the City. Contractor has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's subordinates and employees.

18.6.1 No Partnership or Joint Venture Created Nothing in this Agreement shall be construed as creating a partnership or joint venture between the City and Contractor, or as giving the City a duty to supervise or control the acts or omissions of any person performing services or work under the Agreement.

18.6.2 No Entitlement to Benefits Neither Contractor nor its officers, employees, agents, subagents, contractors or subcontractors shall be entitled to any retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to any City employees, and Contractor expressly waives any claim it may have or acquire to such benefits.

18.7 Wages

18.7.1 Prevailing Wages Contractor shall pay each person employed for the performance of work pursuant to this Agreement, not less than the wage and fringe benefits determined by the agreement between Waste Management of Alameda County and the Brotherhood of Teamsters, Local No. 70, as it may be modified from time-to-time.

18 7 2 Wages for Materials Classifiers (sorters) Contractor shall pay each person employed as materials classifiers (sorters) for the performance of work pursuant to this Agreement, not less than the wage and fringe benefits as follows

Basic Straight-time hourly rate	\$8 00 per hour
Health/Welfare	\$2 60 per hour
Pension	\$0 05 per hour for first three years of service, \$0 30 per hour after three years, \$0 41 per hour after five years of service
Vacation	Two weeks after one year of service Three weeks after five years of service Four weeks after fifteen years of service
Paid Sick Leave	Five days per year Unused sick leave is paid in cash at the end of the year
Overtime and Holiday Rate	One and on-half times the basic straight-time hourly rate is paid for all hours worked in excess of eight hours in any one work day and forty hours in any one work week

18 8 Religious Prohibition There shall be no religious worship, instruction, or proselytization as part of, or in connection with, the performance of this Agreement

18 9 Political Prohibition Monies paid by the City pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government

18 10 Business Tax Certificate Contractor shall obtain and provide proof of a valid City business tax certificate Said business tax certificate will be valid prior to and to the conclusion of this Agreement

18 11 Compliance with Burma (Myanmar) and Nigeria Divestment Ordinances Contractor shall execute Affidavits (incorporated herein as Attachment A) to comply with Ordinances No 11885 and 11886 CMS that certify that Contractor shall forego any contractual relations to provide professional services to

- a The government of Burma (Myanmar) or the government of Nigeria,
- b Any business or corporation organized under the laws of Burma (Myanmar) or Nigeria,
- c Any business or corporation for the express purpose of assisting in operations in or trading with any public or private entity located in Burma (Myanmar) or Nigeria

18 12 Conflict of Interest The following protections against conflict of interest will be upheld

- a Contractor certifies that no member of, or delegate to, the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom
- b Contractor certifies that no member of, or delegate to, the State of California legislature or the California Integrated Waste Management Board shall be permitted to share or take part in this Agreement or in any benefit arising therefrom
- c Contractor certifies that no member, officer, or employee of the City or its designees or agents and no other public official of the City who, in his/her official capacity, exercises any functions or responsibilities with respect to the services to be provided by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter
- d Contractor certifies that to the best of its knowledge as of the date of this Agreement no one who has any financial interest in this Agreement or receives compensation for services from Contractor is related by blood or marriage within the third degree to the Mayor or any one or more members of the City Council, City Manager, or the head of the Agencies involved in the preparation or monitoring of this Agreement
- e Contractor shall incorporate, or cause to be incorporated, in all subcontracts for work to be performed under this Agreement a provision prohibiting such interests pursuant to the purposes of this Section

18 13 Attorney's Fees In any dispute between the parties, whether or not resulting in litigation or any appeal therefrom, the prevailing party shall be entitled to recover from the other party all reasonable costs, including, without limitation, reasonable attorneys' fees "Prevailing parties" shall include without limitation (i) a party who dismisses an action in exchange for sums allegedly due such party, (ii) the party which received performance from the other party of an alleged breach of a covenant or a desired remedy where such performance is substantially equal to the relief sought in an action, or (iii) the party determined to be the prevailing party by a court of law

18 14 Notices All notices, demands, requests, approvals, disapprovals, proposals, consents or other communications whatsoever which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or facsimile followed by telephone or written confirmation of receipt, addressed to the respective party If to the City, address the original letter to the Director, Public Works Agency with courtesy copies to the City Manager and City Attorney

Director
Public Works Agency
City of Oakland
1333 Broadway, Suite 800
Oakland, California 94612
Telephone (510) 238-3961
Facsimile (510) 238-2233

City Manager
Office of the City Manager
City of Oakland
1 City Hall Plaza, 3rd Floor
Oakland, California 94612
Telephone (510) 238-3301
Facsimile (510) 238-2223

City Attorney
Office of the City Attorney
City of Oakland
1 City Hall Plaza, 6th Floor
Oakland, California 94612
Telephone (510) 238-3601
Facsimile (510) 238-6500

If to Contractor, address to
California Waste Solutions
1820 10th Street
Oakland, California 94607
Telephone (510) 832-8111
Facsimile (510) 832-8206

Either party may designate a different mailing address or a different telephone or facsimile number by providing written notice to the other party as provided in this Section. Notice by City to Contractor of a missed pick-up or a service recipient problem or complaint may be given to Contractor orally, by telephone at Contractor's local office, or with written notice via mail, fax, electronic mail, or other means.

18.15 Waiver Waiver of any term or condition contained in this Agreement by any party to the Agreement shall be in writing and shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or a waiver of any other term or condition contained in the Agreement. The subsequent acceptance by City of any fee, or any other monies which become due from Contractor to City shall not be deemed to be a waiver by City of any breach or violation of any term, covenant or condition of this Agreement.

18.16 Assignment Except as expressly provided for in this Agreement, neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement. Under no circumstances shall the City be obligated to consider any proposed assignment by Contractor if Contractor is in default at any time during the period of consideration.

18 16 1 Events Considered to be Assignments For purposes of this Section when used in reference to Contractor, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party, (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor, (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor, (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding, and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor

18 16 2 Provision of Vital Services Contractor acknowledges that this Agreement involves rendering a vital service to the City's residents and businesses, and that the City has selected Contractor to perform the services specified herein based on (i) Contractor's experience, skill and reputation for conducting its Residential Recycling Services operations in a safe, effective and responsible fashion, at all times in keeping with applicable environmental laws, regulations and best management practices, and (ii) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement

18 16 3 City's Consent to Assignment If Contractor requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by the City unless and until Contractor has met the following requirements

- a Contractor shall undertake to pay the City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment,
- b Contractor shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years, and
- c Contractor shall furnish the City with satisfactory proof (i) that the proposed assignee has at least three (3) years of residential recycling collection, Processing, and marketing management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under the Agreement, (ii) that in the last five (5)

years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its recycling or other operations due to any significant failure to comply with state, federal or local environmental laws and that the assignee has provided the City with a complete list of such citations and censures, (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion, (iv) that the proposed assignee conducts its recycling operations in accordance with sound management practices in full compliance with all federal, state and local laws regulating such operations including the handling and disposal of Hazardous Wastes which may be collected, and (v) of any other information required by the City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner

18 17 Defense of Agreement Rights The City will make reasonable good faith efforts to prevent infringement by third parties of the rights granted to Contractor under this Agreement that Contractor brings to the attention of City and when the City determines in its sole discretion that there are infringements, provided however, that Contractor shall, with counsel reasonably acceptable to the City, assume the prosecution (including all related costs and attorney fees) of any lawsuit or administrative proceeding necessary to enforce such rights, and, shall defend, with counsel approved by Indemnitees, indemnify and hold harmless the Indemnitees against any and all Claims arising out of City's performance under this Section 18 17 The City will reasonably cooperate with Contractor in prosecuting and defending its rights Contractor shall reimburse the City, within thirty (30) days of receipt of a City invoice, for all actual, reasonable costs associated with defense of Agreement rights (including but not limited to City staff and City Attorney time, including applicable City overhead allocations, and outside consultants, including attorney fees and costs) Notwithstanding anything to the contrary contained in this Agreement, Contractor shall defend with counsel approved by the Indemnitees, indemnify and hold harmless the Indemnitees against any and all Claims to challenge, annul, void, set-aside or invalidate the City's award of this Agreement or its performance thereunder

18 18 Captions The captions appearing in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope and intent of this Agreement or any of the provision hereof

18 19 Interpretations Each party, and counsel for each party, has reviewed and been provided the opportunity to revise this Agreement Accordingly, the normal rule of construction to the effect of any ambiguities being resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment thereto

18 20 References to Laws All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided In addition, references to specific governmental agencies shall be understood to include agencies which succeed to or assume the functions they are currently performing

18 21 Amendment No modification, amendment or supplement to this Agreement will be binding on the parties unless it is made in writing, duly authorized by Contractor and the City, and signed by both parties

18 22 Jurisdiction Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits With respect to venue, the parties agree that this Agreement is made in and will be performed in Alameda County

18 23 Severability If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situations shall remain in full force and effect

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is be found to void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement, subject to the provisions in Section 3 5

18 24 Cooperation with Subsequent Providers At the expiration of the Agreement Term provided for hereunder, or in the event of termination under Article 14 00 of this Agreement, Contractor, at its own expense, shall cooperate fully with the City, as necessary, to ensure an orderly transition to any and all new service providers, and the City shall have no continuing obligations to Contractor other than those expressly provided for under this Agreement

18 25 Access to and Disclosure of Records

18 25 1 Access to Records Contractor shall permit access to its records and its records of employment, employment advertisements, application forms, and other pertinent data or records relating to Contractor's obligation under Sections 18 3, 18 4, 18 5 and 18 7 of this Agreement, by the California Fair Employment Practices Commission, the City or any appropriate employee, department, or agent designated by the California Fair Employment Practices Commission or by the City respectively, for the purpose of investigating Contractor's compliance with the California Fair Employment Practices Act or Sections 18 3, 18 4, 18 5 and 18 7 of this Agreement Should Contractor be required to provide reports to the City concerning its obligations under this Section, said reports may be in summary form (with private or identifying information about specific employees omitted) which set forth the relevant information in a statistical way

18 25 2 Confidential Information Contractor maintains that certain information provided is confidential and proprietary information ("Confidential Information"),

including but not limited to reported commodities sales prices, personnel employment information, and trade secrets. The City will not disclose the Confidential Information (or any version or permutation thereof) to any third party, including without limitation Contractor's competitors and Customers.

18.25.3 Permitted Release of Information Confidential or proprietary information shall not be subject to this Agreement if such information (i) at the time of disclosure or thereafter, is generally available to and known by the public (other than as a result of its disclosure by the City or its representatives), (ii) was available to the City on a non-confidential basis prior to disclosure by Contractor, or (iii) becomes available to the City on a nonconfidential basis from a person who is not otherwise bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to Contractor or its representatives or any other person, or is not otherwise prohibited from transmitting the information to the City.

18.25.4 Required Release of Confidential Information If the City or any of its representatives are requested or required in legal proceedings, subpoena, civil investigative demand, Public Records Act request or other similar process to disclose all or any part of the confidential or proprietary information, the City shall immediately notify Contractor in writing of the existence, terms and circumstances surrounding such a request or requirement so that Contractor may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy of the receipt of a waiver by Contractor, in the opinion of counsel for the City, disclosure of information by the City or any of its representatives is nonetheless legally required, the City or its representatives may, without liability hereunder disclose only that portion of the information which such counsel advises is legally required to be disclosed, and exercise its best efforts to preserve the confidentiality of the information, including, without limitation, by cooperating with Contractor to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the information so furnished.

18.26 Parties in Interest Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any persons other than the parties to it and their representatives, successors and permitted assigns.

18.27 Compliance with Law Contractor shall comply, at its sole expense, fully and faithfully with all local, state and federal laws, ordinances, regulations and permit requirements, including City Legislation, as they may be amended from time to time, applicable to its performance under this Agreement, or in any way related to Contractor's performance of the services required under this Agreement, including, but not limited to, local, state and federal laws, ordinances and regulations relating to protection of the public's health, safety and welfare or contamination of the environment specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sections 6901 et seq., the California Integrated Waste Management Act of 1989, and all other applicable laws of the State of California,

the County of Alameda, ordinances of the City, the requirements of Local Enforcement Agencies and other agencies with jurisdiction Without limiting the generality of the foregoing, Contractor shall, at its sole expense, prepare and complete, or arrange for the preparation and completion of, any environmental impact report or other environmental review required under applicable local, state and federal law for the construction, modification or operation of physical plants, if any, necessary to perform the services described in this Agreement

18 28 Permits, Authorizations, Licenses Contractor shall obtain, and shall maintain throughout the term of this Agreement, at Contractor's sole expense, in addition to the permits required pursuant to Section 7 1, all other necessary permits, licenses, inspections and approvals required for Contractor to perform all the work and services agreed to be performed by Contractor pursuant to this Agreement Contractor shall show proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses or approvals upon the request of the City

18 29 Permits for Use of Facilities Contractor shall keep in force and comply with the terms and conditions of all existing permits and approvals from governmental authorities necessary for the use of the material recovery facility or Processing facilities (collectively "Facilities") throughout the Service Term or any Extended Term to adequately process all Recyclable Material delivered to the Facilities pursuant to this Agreement Contractor shall keep the City fully informed of its progress in securing renewals of all such permits which occur during the Service Term or any Extended Term and which may affect the ability of Contractor to perform pursuant to this Agreement Upon request, Contractor shall provide the City with copies of all relevant correspondence with permitting agencies and all other relevant material correspondence related to the permitting process with third parties, but not including internal memoranda or correspondence between Contractor and its agents, consultants or attorneys Upon request, Contractor shall also provide the City with a status report on applications for renewals of existing permits or any new permits which may be required to continue operations at the Facilities within existing permitted areas Contractor shall give the City immediate notice of any proposed amendment to or alteration of such permits, or any new permits which may be required Contractor shall use all reasonable efforts to resist any amendments or alterations to permits, the terms of which would prevent or materially interfere with the performance of its obligations under this Agreement, through all available administrative procedures In the event that such permit amendments occur despite Contractor's reasonable efforts to resist them, Contractor shall not be in breach of this Agreement if Contractor complies with such permit amendments A summary list of all current permits held by Contractor for operation of the Facilities, showing both the permit number and date of expiration, is attached to this Agreement as Attachment J and incorporated by reference herein

18 30 Audit The Contractor shall maintain in its office full and complete accounting records, prepared in accordance with generally accepted accounting principles, reflecting Contractor's work on the Program The City may at any time require an audit of the Contractor's books and records or an audit of operations/management at any reasonable time The cost of all required audits shall be the responsibility of the City The City or any of its duly authorized representatives shall have access, on reasonable notice, to such books, records, documents, and other evidence related to

the Program for the purpose of inspection, audit and copying. The Contractor shall provide proper facilities for such inspection, audit, and copying.

These records shall be kept, at a minimum, for three years after the end or termination of the Agreement. In addition, those records which relate to any "dispute" appeal, or litigation, or the settlement of claims, or where an audit exception has been taken, shall be maintained and made available until three years after the resolution of such appeal, litigation, claims or exception. Such audit shall be conducted by City personnel or by an independent firm with experience in auditing public service companies. Audit information shall be kept confidential, except as may be required by public disclosure laws.

Contractor shall furnish City with copies of its annual financial statements within thirty (30) days of their completion.


18.31 Inspection of Facilities and Operational Records The City shall have the right, but not the obligation, to observe and inspect all of Contractor's Facilities and operations under this Agreement. In connection therewith, the City shall have the right to enter the Facilities upon reasonable notice to Contractor and during operating hours, speak to any of Contractor's employees and receive cooperation from such employees in response to inquiries. In addition, upon reasonable notice and without interference with Contractor's operations, the City may review and copy, at its expense, any of Contractor's operational records related to this Agreement. If the City so requests, Contractor shall make specified personnel available to accompany the City Representatives on inspections.

18.32 Entire Agreement, Attachments Included This Agreement is executed in four (4) originals each of which is deemed to be an original. This Agreement consists of 61 pages and Attachments A through K attached hereto and constitutes the entire understanding and agreement of the City and Contractor with respect to the services to be provided under this Agreement. No prior written or oral statement or proposal shall alter any term or provision of this Agreement.

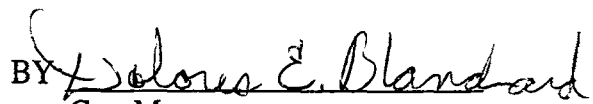
18 33 Recitals The foregoing recitals are true and correct and are an integral part of this Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the first date indicated above

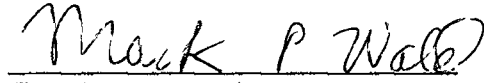
RECOMMENDED FOR APPROVAL


Director, Public Works Agency
Date 7/16/97

CITY OF OAKLAND,
A Municipal Corporation

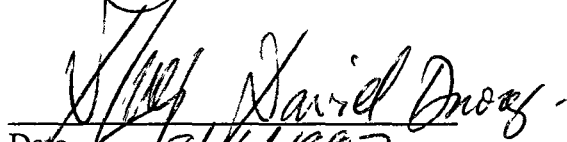
BY 
City Manager
Date 7-18-97

APPROVED AS TO FORM AND LEGALITY


City Attorney
Date 7/18/97

*Resolution No. 73576
C.M.S. dated 6/10/97*

CONTRACTOR


Date 7/16/1997

*Business License #
182931*

*Accounting #
30002027*

AFFIDAVIT - F

I, DAVID DUONG, the undersigned, as
(Name)
PRESIDENT of CALIFORNIA WASTE SOLUTIONS INC
(Title) (Firm)

(hereinafter referred to as "Firm") am duly authorized to attest on behalf of the Firm

I I certify that the policy of the Firm is to forego any contractual agreement to provide this Firm's professional services to

A any business or corporation organized under the laws of Burma (Myanmar) or of Nigeria, or

B any business or corporation (for the express purpose of assisting in operations in or trading with any private or public entity located in Burma (Myanmar) or Nigeria.

II I certify that the appropriate individuals of authority are cognizant of their responsibility to notify the City Manager of the City of Oakland if the Firm subsequently enters into any contractual relationship described in Section I above, or if the policy prohibiting such contractual agreements is changed, until the human rights abuses described in City of Oakland Ordinances No 11885 C.M.S and 11886 C.M.S are ended.

In witness whereof, the undersigned has executed this instrument on this 30th day of

April, 1997

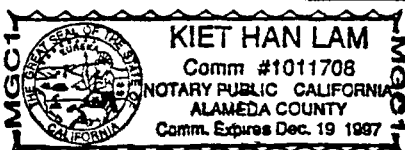
[Signature] President
(Signature and Title)
California waste solutions inc
(Name of Firm)

1820-10th St,
(Street Address)
Oakland, Ca 94607
(City, State and Zip Code)

Subscribed and sworn to before me this 30th day of April, 1997

[Signature]
Notary Public

My commission expires Dec. 19-97



Attachment B
Performance Bond

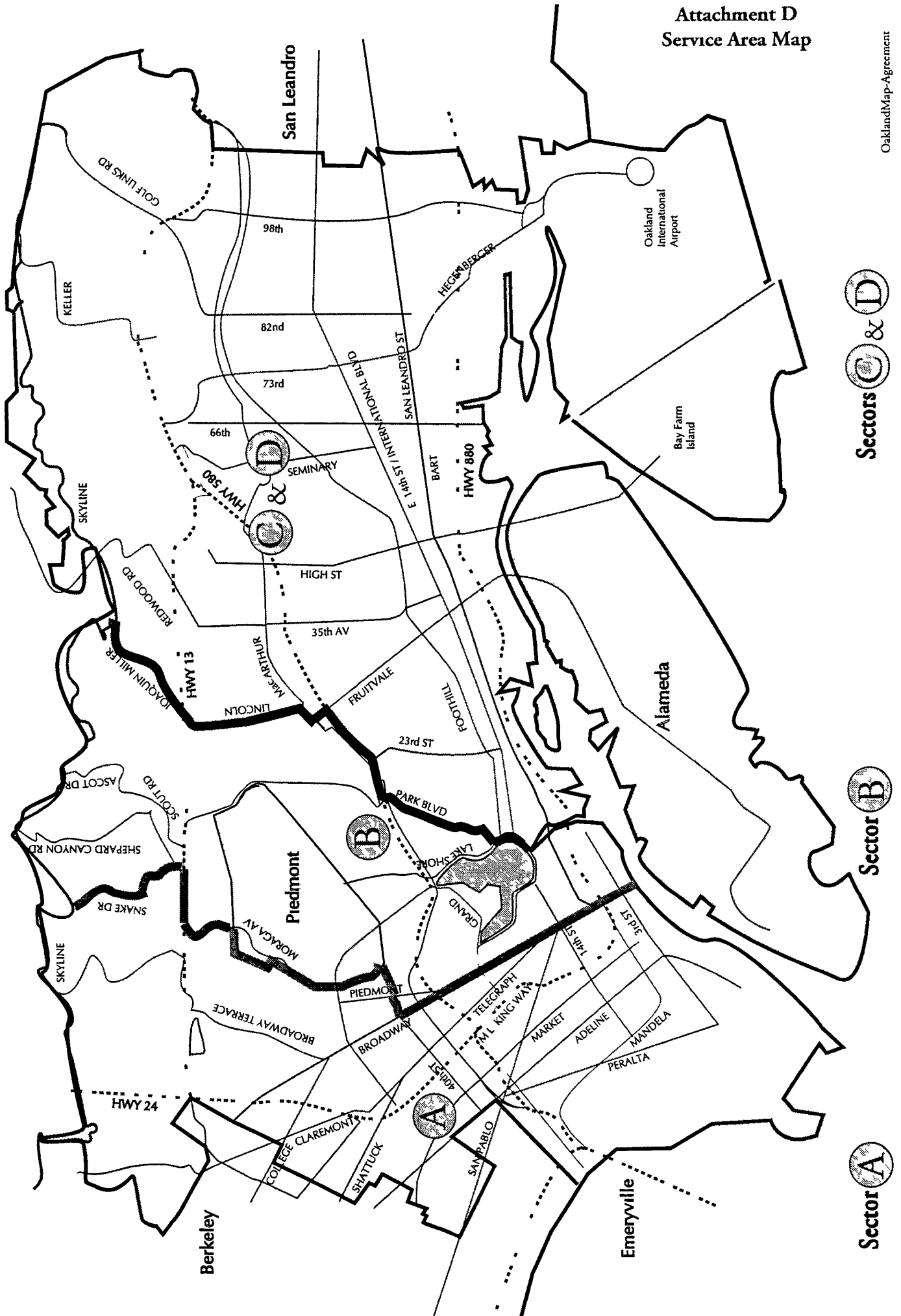
Will be attached by October 1, 1997

Attachment C
Implementation Plan

Will be attached by August 1, 1997

Attachment D Service Area Map

OaklandMap-Agreement



Sectors C & D

Sector B

Sector A

Attachment E
Report Formats

Will be attached by December 1, 1997

Attachment F
List of City Facilities (in Sectors A & B)

Department	Facility	Address	Service Level
	Veterans Memorial Building	200 Grand Ave	Two bins
Head Start	Frank G Mar	274 12th St	One bin/Seasonal
Head Start	Dignity	690 15th St	One bin/Seasonal
Head Start	Willow	1682 7th St	One bin/Seasonal
Head Start	Fannie Wall	647 55th St	One bin/Seasonal
Head Start	Chestnut Court	2300 Chestnut St	One bin/Seasonal
Head Start	Chester	934 Chester St	One bin/Seasonal
Library	Asian Community	388 9th St	Two bins
Library	Dimond/Rohan	3565 Fruitvale	One 90 gal toter
Library	Lakeview	550 El Embarcadero	One 64 gal toter
Library	Rockridge	5366 College Ave	One toter
Library	Temescal	5205 Telegraph Ave	Three bins
Library	West Oakland	1801 Adeline	Three bins
Library	Golden Gate	5606 San Pablo Ave	One bin
Library	Montclair	1687 Mountain Blvd	Two bins
Library	Piedmont	160 41st St	One bin
OFD	Administration Building	250 Fallon St	Two bins
OFD	Firehouse #1	1605 MLK Jr	Three 90 gal toters (plus 3 bins)
OFD	Firehouse #10	172 Santa Clara Ave	Two bins
OFD	Firehouse #12	822 Alice St	Two bins
OFD	Firehouse #15	455 27th St	Two bins
OFD	Firehouse #19	5776 Miles Ave	One bin
OFD	Firehouse #3	1445 14th St	Two bins
OFD	Firehouse #5	934 34th St	Two bins
OFD	Firehouse #6	7080 Colton Blvd	Two bins
OFD	Firehouse #8	463 51st St	Two bins
OPR	Lakeside Park Sailboat House	Bellevue Ave	Special events
OPR	Dimond Recreation Center	3860 Hanly Road	Two bins
OPR	Davie Memorial Stadium	198 Oak Road, Piedmont	One bin
OPR	Lions Swimming Pool	1860 Hanly Road	One bin
OPR	Francis Marlow Smith Recreation Center	1969 Park Blvd	One bin
OPR	Lakeside Park Garden Center	666 Bellevue Avenue	Special events
OPR	Rotary Nature Center	Bellevue Ave	Two bins
OPR	North Oakland Recreation Center	365 45th St	One bin
OPR	HJK Convention Center	10 10th St	One bin
OPR	Montclair Recreation Center	6300 Moraga Ave	Three bins
OPR	Mosswood Recreation Center	3612 Webster St	Two bins
OPR	Temescal Swimming Pool	371 45th St	One bin
OPR	Poplar Recreation Center	3130 Peralta St	One bin
OPR	DeFremery Rec Ctr/Swimming Pool	1651 Adeline	Two bins
OPR	Bushrod Recreation Center	560 59th St	One bin
OPR	Lincoln Recreation Center	250 10th St	One bin
Total Service Level			61 bins 6 toters

Attachment H (from Contractor's proposal to City)

Salvage Revenue Worksheet

Commodity	Material Grade/Descr	Baled or Loose	1998	1999	2000	2001	2002	2003	2004
ONP #6	ISRI	Baled	25	25	30	35	40	45	45
ONP #8	ISRI	Baled	53	53	54	55	57	58	60
OCC #11	ISRI	Baled	60	65	70	70	80	80	80
Mixed Paper #1	ISRI	Baled	10	10	10	10	10	10	10
Magazine Paper #10	ISRI	Baled	10	10	10	10	10	10	10
Flint Glass	Mill/Beneficiator	Loose	90	90	90	90	90	90	90
Green Glass	Mill/Beneficiator	Loose	70	70	70	70	70	70	70
Amber Glass	Mill/Beneficiator	Loose	80	80	80	80	80	80	80
Mixed Glass	Mill/Beneficiator	Loose	60	60	60	60	60	60	60
Clear PET	Mill/Broker	Baled	740	740	740	740	740	740	740
Colored PET	Mill/Broker	Baled	740	740	740	740	740	740	740
Natural HDPE	Mill/Broker	Baled	350	350	400	450	450	450	450
Colored HDPE	Mill/Broker	Baled	100	100	100	100	100	100	100
Mixed Plastics	Mill/Broker	Baled	30	30	30	30	30	30	30
Aluminum UBC	ISRI	Baled	2100	2100	2100	2100	2100	2100	2100
Aluminum Foil	ISRI	Baled	400	400	400	400	400	400	400
Steel/Tin Cans	ISRI	Baled	45	45	45	45	45	45	45
Aseptic Containers	ISRI	Baled	0	0	0	0	0	0	0
Used Motor Oil	Evergreen	Liquid	0 10	0 10	0 10	0 10	0 10	0 10	0 10

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Attachment H
City's Minority and Women Business Enterprise and Small Local Business Enterprise Programs

CITY OF OAKLAND
AND
REDEVELOPMENT AGENCY
MINORITY AND WOMEN BUSINESS ENTERPRISE CONSTRUCTION
PROGRAM

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CITY OF OAKLAND
AND
REDEVELOPMENT AGENCY
MINORITY AND WOMEN BUSINESS ENTERPRISE CONSTRUCTION
PROGRAM

I Objective

To establish goals for the participation of minority business enterprises and women business enterprises in the City of Oakland and Redevelopment Agency construction contracts and to establish a program for the achievement of the goals.

II Definitions

1. **Minority group member** - a person who is Black, Hispanic, Asian or Pacific Islander, or American Indian or Alaskan Native.
 - a) **Black** - all persons having origins in any of the Black racial groups of Africa.
 - b) **Hispanic** - all persons of Mexican, Puerto Rican, Cuban, Central or South American descent and Spanish culture. The Portuguese are excluded from the Hispanic category and are to be classified according to their race.
 - c) **Asian or Pacific Islander** - all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands.
 - d) **American Indian or Alaskan Native** - all persons having origins in any of the original peoples of North America, and who maintain cultural identifications through tribal affiliation or community recognition.
- 2 **Minority Business Enterprise** - United States business wherein the minority group members or stockholders have at least 51% ownership interest in the business and possess control over management, capital and earnings. If the business is publicly owned, the minority group members or stockholders must have at least 51% ownership interest in the business and possess control over management, capital and earnings.

- 3 **Women Business Enterprise** - United States business wherein women members or stockholders have at least 51% ownership interest in the business and possess control over management, capital and earnings. If the business is publicly owned, the women members or stockholders must have at least 51% ownership interest in the business and possess control over management, capital and earnings.
- 4 **Small Business Enterprise** - United States business which meets the definition of a minority business enterprise or women business enterprise, and in addition, meets the small business size standards of the Small Business Administration (Exhibit A).
- 5 **City** - Reference to the City or City Council includes the Redevelopment Agency, and reference to the City Manager includes the Agency Administrator with regards to this Program.
- 6 **Contractor** - The individual partnership, corporation, joint venture or other legal entity entering into a contract with the City.
- 7 **Subcontractor** - The individual, partnership, corporation or other legal entity entering into a contract with the contractor to perform a portion of the work.
8. **Joint Venture** - An association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. Each party to the joint venture must hold a current, active license in good standing, and the joint venture must hold a current, active joint venture license.

III Goals

The Minority and Women Business Enterprise Construction Program establishes the following goals:

- 1 A goal of 30% of the contract amount for the participation of minority business enterprises in City construction contracts.
 - a) 50% of the Minority Business Enterprises should qualify as small business enterprises.

- 2 A goal of 5% of the contract amount for the participation of women business enterprises in City construction contracts
 - a) 50% of the women business enterprises should qualify as small business enterprises
 - b) A business owned by minority women may be counted towards fulfillment of either the goal for the participation of women business enterprises or minority business enterprises, but not both

IV Program

The City shall require that contractors bidding on construction contracts abide by the provisions of the Minority and Women Business Enterprise Construction Program and make every effort to obtain minority and women business enterprise participation. Failure to provide the information referenced in various sections of this program will result in a determination by the City that the contractor is not a responsible bidder. It is the intention of the City to award construction contracts to the lowest responsible bidder who has achieved, or made a good faith effort to achieve, the goals for minority and women business enterprise participation.

In order to achieve the goals for minority and women business enterprise construction participation, the contractor may award a portion(s) of the contract to bona fide minority or women owned firms, minority or women owner-operated equipment, minority or women brokers, minority or women suppliers or prefabricators. A minority or women business enterprise will be considered bona fide if the minority or women group members' ownership interests are real and continuing and not created solely to meet the City's goals for minority and women business enterprise construction participation. The minority or women business enterprise must perform work or provide services and/or supplies and not merely act as a passive conduit. Where a minority or women business enterprise acts as broker or agent, only the commission or fee earned may be counted towards the contractor's goals. This commission or fee will not be counted if the minority or women business enterprise performs no substantive service.

In the event the City has reason to question the ownership of a minority or women business enterprise, the burden of proof is on the claimant and/or contractor to provide documentation to substantiate the minority or women ownership of the business.

Certification

Minority and women businesses must be certified prior to submittal of a bid in order to receive credit towards the achievement of the minority and women goals. Firms must be certified by the City or an agency approved by the City.

The City will use 49CFR Part 23 as the procedure for the certification of minority and women businesses.

Firms intentionally falsifying their status as a minority or woman business will be debarred from bidding on future City work for a period of three (3) years.

Leverage Buyout: In the event an individual(s) purchases an existing business by incurring debt from the prior business owner (i.e., the prior business owner sells the business to minority or women individuals, which pays less than 50% down and agrees to pay the balance in installments or another similar credit arrangement), the ownership interest of the individual(s) cannot be subject to control or exercise of discretion of the prior business owner. The prior business owner's relationship to the minority or women individuals, must be that of creditor, only. As a creditor, the prior business owner and the minority or women individuals must enter into an agreement whereby the minority or women individual makes an unconditional, fixed and certain obligation to pay the prior business on extended credit.

The prior business owner must

1. Have no equity interest in the new business other than that of a creditor,
2. Shall have no rights to share in the profits and losses of the newly formed business,
3. Shall have no right to exercise control of the newly formed business; and
4. Shall not extend any other service or item of value to the newly formed business, unless the minority or women individual(s) compensates the prior owner for the fair market value of such service or item extended. For example:
 - a) No sharing of equipment or employees.
 - b) No renting of space or equipment at below fair market value.

VI Joint Ventures

Whenever a joint venture involves a business owned by minorities or women, the contractor shall provide the City with a full account of the nature of the minority or women ownership interest, the basis for the creation of the joint venture, and the particular financial participation and administrative responsibilities of the interested parties. Such joint venture partnership or other multi-entity relationship shall ensure that the participating business owned by minorities or women has a commensurate share of the profit or loss to be realized from the joint venture.

The joint venture, partnership or other multi-entity relationship shall be in writing. Joint ventures, partnerships or other multi-entity relationships must conform to the pertinent laws which govern the creation of such business arrangements. The City shall have the right to review same and determine if such arrangement is proper within the requirements of the Minority and Women Business Enterprise Construction Program.

In order for the City to consider a joint venture as being bona fide, a joint venture agreement must be submitted to the City for approval. As a minimum, the joint venture agreement must include the following provisions:

- 1 Purpose and length of the joint venture;
- 2 Location of the joint venture office,
- 3 License of the joint venture (if required),
- 4 Name, ethnic and gender group of all joint venture partners;
- 5 Actual work to be performed by the joint venture partners;
6. Management and control of the joint venture partners;
- 7 Responsibilities of the joint venture partners;
8. Capitalization of the joint venture partners,
9. Financial participation of the joint venture partners,
- 10 Profit and loss of the joint venture partners;
- 11 Compensation to the joint venture partners,

- 12 Rental of equipment or space agreements for the joint venture,
13. Bonding and insurance for the joint venture, and
14. Dissolution of the joint venture

VII Counting of MBE/WBE/JV Participation

MBE/WBE/JV participation shall be counted toward meeting the goals as described in the following sections:

1. Payments to a MBE/WBE contractor or subcontractor which compensates the MBE/WBE for work which it actually performs by its own forces may be counted. The work performed must provide a commercially useful function. In the event that a minority business is owned and controlled by women, the firm may be counted either towards the achievement of the goal for minority or women, but not both.
 - a) A MBE/WBE is considered to be providing a commercially useful function when it is responsible for execution of a distinct element of the work and carries out its responsibilities by actually performing, managing and/or supervising the work involved. To determine whether a MBE/WBE is performing a commercially useful function, the City shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.
 - b) Consistent with normal industry practices, a MBE/WBE may enter into subcontracts. If a MBE/WBE subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the MBE/WBE shall be presumed not to be providing a commercially useful function. The MBE/WBE may present evidence to rebut this presumption to the City. The City's decision on the rebuttal of this presumption is final.
- 2 Payments to minority and women owner operator of equipment will be credited 100% towards the achievement of the MBE or WBE goal but not both. The minority or women owner-operator of equipment must own or be purchasing the equipment. Rental of equipment will not be considered as being owner-operated.

- 3 A portion of the payment to a joint venture which includes a MBE/WBE as a partner may be counted towards achievement of the goals. The portion of the contract amount which compensates the joint venture for the work performed by the MBE/WBE partner may be counted. The joint venture must be approved by the City prior to any credit being given towards the achievement of the goals.
- 4 A portion of the payment to MBE/WBE manufacturers, fabricators, suppliers, or regular dealers, may be counted towards achievement of the goals. Sixty percent (60%) of the purchase price of goods and supplies will be credited towards the achievement of the MBE/WBE goals.
 - a) For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies purchased.
 - b) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.
5. Ten percent (10%) of the amount paid to MBE/WBE brokers as commission, may be counted towards the goals.
6. One hundred percent (100%) of the amount paid to MBE/WBE trucking brokers will be counted towards the goals if the broker has:
 - a) Signed agreements that all trucking will be performed by MBE/WBE truckers,
 - b) a "certified roster" showing that all truckers are certified MBE/WBE, and
 - c) a signed statement on a "certified roster" that indicates that 100% of revenue paid by the broker will be paid to MBE/WBE truckers listed on the "certified roster".

- 7 Trucking brokers who do not meet the criteria of item 6 will only receive credit for the commission fee earned and the actual dollar amount of work performed by MBE/WBE truckers.
- 8 Payments to MBE/WBE firms that are not contractors/subcontractors, suppliers, manufacturers, regular dealers, brokers, truckers or owner-operator of equipment shall be credited towards the goals as follows.
 - a) The fees or commission charged for providing professional, technical, consultant or managerial services and/or assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract will be counted, provided that the City agrees the fees or commission is reasonable and not excessive as compared with fees or commission customarily allowed for similar services.
 - b) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies will be counted, provided that the City agrees the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c) The fees or commission charged for providing bonds or insurance specifically required for the performance of the contract will be counted, provided that the City agrees the fees or commission is reasonable and not excessive as compared with fees or commission customarily allowed for similar services.

VIII Maintaining MBE/WBE Participation

Contractors must maintain the MBE/WBE percentages indicated at time of contract award throughout the term of the contract. This includes any increase of the contract by amendment or change order

Should the contractor(s) fail to maintain the dollar amount for MBE/WBE participation, the City may impose a penalty equal to the amount that should have been awarded to maintain the participation stated in the bid. If the participation level stated in the bid is less than the City goals, the contractor must achieve the goals as to the change order or amendments or demonstrate a good faith effort.

IX Bid Process

Contractors shall notify minority and women contractor associations and business development centers of their intention to solicit minority and women business enterprise participation at least two (2) weeks prior to the bid opening. Such notification shall be by registered or certified mail. Contractors shall also seek out minority or women subcontractors, suppliers, manufacturers, brokers, truckers or owner-operators of equipment by making positions and opportunities known to the news media servicing minority and women contractors and subcontractors.

So as to afford minority and women suppliers and prefabricators an opportunity to participate in the work, contractors shall notify minority and women supplier associations or clearinghouses of their supply or prefabrication needs at least two (2) weeks prior to the bid opening. Such notification shall be by registered or certified mail.

- 1 Bid Opening - Contractors must submit with their bid a listing of all MBE/WBEs that will be utilized on the project. Contractors must list the respective dollar amounts for MBE/WBEs. MBE/WBEs must be certified prior to submittal of the bid in order for credit to be applied towards the goals. In addition to any other documents required by the bid specifications, the contractor shall submit the List of Subcontractors (Exhibit B).
2. Contractors must submit with their bid an Affidavit of Non-Disciplinary or Investigatory Action form attesting that no adverse action has been taken against them by Equal Employment Opportunity Commission (EEOC), State of California Department of Fair Employment and Housing (DFEH) or the U.S. Department of Labor Contract Compliance Program (OFCCP) or to provide an explanation for any such actions, except where legal action is pending (Exhibit C).
- 3 Pre-award Meeting - The City will review the three lowest bidders to determine whether or not the goals have been achieved or documentation of a good faith effort has been made by the bidders. The three apparent low bidders will be required to attend a pre-award meeting to determine compliance with the Minority and Women Business Enterprise Construction Program. The bidders shall provide the City with the bid documents or price quotes received from the three lowest bids received from subcontractors, suppliers, truckers, and owner-operator of equipment to be used on the project. This list should include name, address, telephone number, trade, contact

person(s) and the total dollar amount of the subcontract. The contractor shall also indicate the businesses claiming to be owned by minorities or women.

If the contractor has not achieved the goals for minority and women business enterprise participation, the City shall determine whether the contractor made a good faith effort to achieve the goals. This will be done by reviewing the documentation submitted by the contractor.

The prime contractor shall notify MBE/WBE businesses of their intent to solicit participation from these groups at least two (2) weeks prior to the submittal of a bid.

As a minimum, the prime contractor shall take the following steps:

1. Advertise in three (3) publications (a local newspaper, a minority/woman business publication and a major business publication). The advertisement in such publications should appear two weeks prior to submittal of bid. The advertisement must describe the type of work being solicited and give the name and telephone number of a contact person with knowledge of the project.
2. Two (2) weeks prior to the bid due date letters must be sent certified return receipt requested to MBE/WBE businesses. The letter must describe the scope of work, work being solicited, insurance requirements, contact person with knowledge of the project, when bids are due and where specifications and plans can be obtained. As a minimum, the contractor shall send three (3) letters to minority businesses and one (1) letter to women businesses for each trade or category of work.
3. Two (2) weeks prior to the bid due date letters should be sent certified return receipt requested to MBE/WBE business associations and development centers or any other related agency which disseminates bid information to MBE/WBE businesses. Letters must be sent to a minimum of four (4) organizations and contain the information stated in item number 2 above.
4. Describe efforts to enter into joint venture arrangements with MBE/WBE businesses. Provide a description of efforts to enter into joint venture arrangements.
5. Describe assistance provided to MBE/WBE businesses relative to:
 - a) Review of specifications and plans or documents issued by the City;

- b) Review of work to be performed by the subcontractors,
- c) Describe or document efforts undertaken to encourage majority subcontractors to utilize MBE/WBE businesses,
- d) Document any other effort undertaken by the prime contractor to encourage the participation of MBE/WBE businesses; and
- e) Report responses and proposals received from MBE/WBE businesses. This report should indicate the actions taken by the prime contractor in response to the proposals received from MBE/WBE businesses and from joint ventures which include MBE/WBE businesses. In cases where proposals have been rejected by the prime contractor the reason(s) for rejection shall be indicated.

X Monitoring

To ensure compliance with the program the contractor must ensure that the City has the right to review all records and documents of the contractor, as well as all subcontractors. Failure to allow the City to review the records may result in a penalty of 1% of the contract amount or \$1,000 per day, whichever is less. Such refusal shall be deemed a material breach of contract which may result in termination of the contract. In addition, the contractor or subcontractors may be debarred from participating in future City contracts.

No substitution can be made of a listed minority or women subcontractor, trucker, manufacturer, supplier and owner operator of equipment without the approval of the City.

Should the prime contractor fail to achieve the MBE/WBE participation listed at the time the contract is awarded, the City may impose a penalty equal to the amount that should have been awarded to the MBE/WBE.

Contractors must provide Exhibit D, with each progress payment indicating payments made to MBE/WBEs in order to receive subsequent progress payments.

XI Emergency Work

MBE/WBE firms will be given priority consideration for emergency type work commensurate with the goals of this program. A listing of available MBE/WBE firms will be established on an annual basis to be used for emergency work.

XII Protest Procedure

In the event a determination is made that the apparent low bidder has not made a good faith effort to achieve the minority and women business enterprise participation goals, said party shall have the right to protest such determination before the City Council. The City shall notify said party by certified or registered mail of the date when the Council will consider the rejection of the bid of the apparent low bidder and also hear and consider the protest. If the Council sustains the determination that a good faith effort was not made, the Council shall award the contract to lowest responsible bidder.

XIII Program Review

The Minority and Women Business Enterprise Construction Program will be periodically reviewed by the City Manager. Changes in the program which are required to effectively administer the program may be made by the City Manager. A quarterly review of all Minority and Women Business Enterprise Construction Program contracts will be provided to the City Council.

Revised 7/5/96

**CITY OF OAKLAND
AND
ECONOMIC DEVELOPMENT AGENCY
SMALL LOCAL BUSINESS ENTERPRISE PROGRAM**

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**CITY OF OAKLAND
AND
REDEVELOPMENT AGENCY
SMALL LOCAL BUSINESS ENTERPRISE PROGRAM**

I. Objective

In order to ameliorate disadvantages suffered by Small Local Business Enterprises, particularly where the City of Oakland itself creates some of the disadvantages, including higher taxes, higher wages and benefits for labor; and to best serve the public interest by encouraging businesses to locate and remain in Oakland; the City of Oakland hereby establishes a goal for the Small Local Business Enterprise Program (Program) in City of Oakland construction contracts and establishes a program for the achievement of the goal.

II. Definitions

- A. City - Reference to the City or City Council includes the Redevelopment Agency, and reference to the City Manager includes the Agency Administrator with regards to this Program.
- B. Contractor - The individual, partnership, corporation, joint venture or other legal entity entering into a contract with the City.
- C. Public Works Contract - Any construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds or by a Developer who receives City subsidy, be it financial or otherwise.
- D. Subcontractor - The individual, partnership, corporation or other legal entity entering into a contract with the contractor to perform a portion of the work.
- E. Small Local Business Enterprise - A business which meets the Small Business Administration's size standard as set forth in Exhibit A, is located in Oakland and meets the following criteria:
 - (1) A business at a fixed, established commercial or residential address which constitutes the business location and at which work of an administrative, clerical, professional or production nature pertinent to the contract between the business and the Contractor is conducted.

- (2) The business location is not a temporary office, movable office or a Post Office Box.
- (3) The business has been in existence at least six months in Oakland with a valid City of Oakland Business Tax Certificate six (6) months prior to submittal of bid.
- (4) The business has proof of past contracts citing its Oakland business address.

III Goal

The Small Local Business Enterprise Program establishes:

A goal of 20% of the contract amount for participation of Small Local Business Enterprise.

IV Program

The City shall require that contractors bidding on construction contracts abide by the provisions of the Program and aggressively make every effort to obtain Small Local Business Enterprise participation. Failure to provide the information referenced in various sections of this Program will result in a determination by the City that the contractor is not a responsible bidder. It is the intention of the City to award construction contracts to the lowest responsible bidder who has achieved, or made a good faith effort to achieve, the goal for small local business enterprise participation.

In order to achieve the goal for small local business enterprise construction participation, the contractor may award a portion(s) of the contract to bona fide small local business enterprises, small local business owner/operated equipment, small local business brokers, small local business suppliers or prefabricators. A small local business enterprise will be considered bona fide if the small local business enterprise members' ownership interests are real and continuing and not created solely to meet the City goal for small local business enterprise construction participation. The small local business enterprise must perform work or provide services and/or supplies and not merely act as a passive conduit. Where a small local business enterprise acts as broker or agency, only the commission or fee earned may be counted towards the contractor's goal. This commission or fee will not be counted if the small local business enterprise performs no service which substantially affects the project. In the event the City has reason to question the ownership of a small local business enterprise, the burden of proof is on

the claimant and/or contractor to provide documentation to substantiate the small local business enterprise status. The City will not automatically accept the determination of another agency in this matter.

V. Certification

A local business must be certified prior to the submittal of a bid in order to receive credit towards the achievement of the small local business goal.

Firms must be certified by the City or an approved agency. The City will use 49CFR Part 23 and the definitions as stated in Section II E of this Program as the procedures for certification of a small local business.

Firms intentionally falsifying their status as a small local business will be debarred from bidding on future City work for a period of three (3) years.

VI Joint Ventures

Whenever a joint venture involves a business owned by small local business, the contractor shall provide the City with a full account of the nature of the small local business ownership interest, the basis for the creation of the joint venture, and the particular financial participation and administrative responsibilities of the interested parties. Such joint venture partnership or other multi-entity relationship shall ensure that the participating business owned by small local business has a commensurate share of the profit or loss to be realized from the joint venture.

The joint venture, partnership or other multi-entity relationship shall be in writing. Joint ventures, partnerships or other multi-entity relationships must conform to the pertinent laws which govern the creation of such business arrangements. The City shall have the right to review same and determine if such arrangement is proper within the requirements of the Small Local Business Enterprise Program.

In order for the City to consider a joint venture as being bona fide, a joint venture agreement must be submitted to the City for approval. As a minimum, the joint venture agreement must include the following provisions:

1. Purpose and length of the joint venture;
2. Location of the joint venture office;
3. License of the joint venture (if required),

4. Names of all joint venture partners;
5. Actual work to be performed by the joint venture partners;
6. Management and control of the joint venture partners;
7. Responsibilities of the joint venture partners;
8. Capitalization of the joint venture partners;
9. Financial participation of the joint venture partners;
10. Profit and loss of the joint venture partners;
11. Compensation to the joint venture partners;
12. Rental of equipment or space agreements for the joint venture;
13. Bonding and insurance for the joint venture; and
14. Dissolution of the joint venture.

VII Counting of SLBE/JV Participation

SLBE/JV participation shall be counted toward meeting the goal as described in the following sections:

1. Payments to a SLBE contractor or subcontractor which compensates the SLBE for work which it actually performs by its own forces may be counted. The work performed must provide a commercially useful function.
 - a) A SLBE is considered to be providing a commercially useful function when it is responsible for execution of a distinct element of the work and carries out its responsibilities by actually performing, managing and/or supervising the work involved. To determine whether a SLBE is performing a commercially useful function, the City shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.
 - b) Consistent with normal industry practices, a SLBE may enter into subcontracts. If a SLBE subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SLBE shall be presumed not to be providing a commercially useful function. The SLBE may present evidence to rebut this presumption to the City. The City's

decision on the rebuttal of this presumption is final.

2. Payments to small local business owner-operator of equipment will be credited 100% towards the achievement of the SLBE goal. The small local business owner-operator of equipment must own or be purchasing the equipment. Rental of equipment will not be considered as being owner-operated.
3. A portion of the payment to a joint venture which includes a SLBE as a partner may be counted towards achievement of the goal. The portion of the contract amount which compensates the joint venture for the work performed by the SLBE partner may be counted. The joint venture must be approved by the City prior to any credit being given towards the achievement of the goal.
4. A portion of the payment to SLBE manufacturers, fabricators, suppliers, or regular dealers will be counted 100% towards achievement of the SLBE goal.
 - a) For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies purchased.
 - b) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.
5. Ten percent (10%) of the amount paid to SLBE brokers as commission, may be counted towards the SLBE goal.
6. One hundred percent (100%) of the amount paid to SLBE trucking brokers will be counted towards the goal if the broker has:
 - a) Signed agreements that all trucking will be performed by SLBE truckers;

- b) a "certified roster" showing that all truckers are certified SLBE; and
 - c) a signed statement on a "certified roster" that indicates that 100% of revenue paid by the broker will be paid to SLBE truckers listed on the "certified roster".
7. Trucking brokers who do not meet the criteria of item 6 will only receive credit for the commission fee earned and the actual dollar amount of work performed by SLBE truckers.
8. Payments to SLBE firms that are not contractors/subcontractors, suppliers, manufacturers, regular dealers, brokers, truckers or owner-operator of equipment shall be credited towards the goal as follows:
- a) The fees or commission charged for providing professional, technical, consultant or managerial services and/or assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract will be counted, provided that the City agrees the fees or commission is reasonable and not excessive as compared with fees or commission customarily allowed for similar services.
 - b) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies will be counted, provided that the City agrees the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c) The fees or commission charged for providing bonds or insurance specifically required for the performance of the contract will be counted, provided that the City agrees the fees or commission is reasonable and not excessive as compared with fees or commission customarily allowed for similar services.

VIII Maintaining SLBE Participation

Contractors must maintain the SLBE percentages indicated at time of contract award throughout the term of the contract. This includes any increase of the contract by amendment or change order.

Should the contractor(s) fail to maintain the dollar amount for SLBE participation, the City may impose a penalty equal to the amount that should have been awarded to maintain the participation stated in the bid. If the participation level stated in the bid is less than the City goal, the contractor must achieve the goal as to the change order or amendments or demonstrate a good faith effort.

IX. Bid Process

Contractors shall notify Small Local Business Enterprise associations and business development centers of their intention to solicit Small Local Business Enterprise participation at least two weeks prior to the bid opening. Such notification shall be by certified or registered letter. Contractors shall also seek out Oakland based Small Local Business Enterprises by making positions and opportunities known to the news media servicing Small Local Business Enterprises.

So as to afford Small Local Business Enterprises, suppliers and Prefabricators an opportunity to participate in the work, contractors shall notify suppliers, associations or clearinghouses of their supply or prefabrication needs at least two weeks prior to the bid opening.

1. Bid Opening - Contractors must submit with their bid a listing of all SLBEs that will be utilized on the project. Contractors must list the respective dollar amounts for SLBEs. SLBEs must be certified prior to submittal of the bid in order for credit to be applied towards the goal. In addition to any other documents required by the bid specifications, the contractor shall submit the List of Subcontractors (Exhibit B).
2. Pre-award Meeting - The City will review the three (3) lowest bidders to determine whether or not the goal for Small Local Business Enterprise Program has been achieved or documentation of a good effort has been made by the bidders. The three (3) apparent low bidders will be required to attend a pre-award meeting to determine compliance with the Program. The low bidders shall provide the City with the bid documents or price quotes received from the three (3) lowest bids received from subcontractors, suppliers, truckers, and owner/operated equipment to be used on the project. This list should include name, address, telephone number, trade, contact person(s) and the total dollar amount of the subcontract. The contractor shall also indicate the businesses claiming to be Small Local Business Enterprise.

If the contractor has not achieved the goal for Small

Local Business Enterprise participation, the City shall determine whether the contractor made a good faith effort to achieve the goal. This will be done by reviewing the documentation submitted by the contractor.

As a minimum, the prime contractor shall take the following steps:

- a) Advertise in three (3) local publications (two local newspapers, and a small local business publication). For example, the Oakland Tribune, the Oakland Post, the Montclairiron, etc.). The advertisement in such publications should appear two weeks prior to submittal of bid or proposal. The advertisement must describe the type of work being solicited and give the name and telephone number of a contact person with knowledge of the project.
- b) Two (2) weeks prior to the bid or proposal due date letters must be sent certified return receipt requested to SLBE businesses. The letter must describe the scope of work, work being solicited, insurance requirements, contact person with knowledge of the project, when bid or proposals are due and where specifications, plans or proposals can be obtained. As a minimum, contractor should send four (4) letters to small local businesses for each trade or category of work.
- c) Two (2) weeks prior to the bid or proposal due date letters should be sent certified return receipt requested to SLBE business associations and development centers or any other related agency which disseminates bid information to SLBE businesses. Letters must be sent to a minimum of four (4) organizations and contain the information stated in item number b above.
- d) Describe efforts to enter into joint venture arrangements with SLBE businesses. Provide a description of efforts to enter into joint venture arrangements.
- e) Describe assistance provided to SLBE businesses relative to:
 - 1) Review of specifications and plans or documents issued by the City;
 - 2) Review of work to be performed by the subcontractors;
 - 3) Describe or document efforts undertaken to encourage majority subcontractors to utilize SLBE businesses;

- 4) Document any other effort undertaken by the prime contractor to encourage the participation of SLBE businesses; and
 - 5) Report responses and proposals received from SLBE businesses. This report should indicate the actions taken by the prime contractor in response to the proposals received from SLBE businesses and from joint ventures which include SLBE businesses. In cases where proposals have been rejected by the prime contractor the reason(s) for rejection shall be indicated.
3. The contractor shall provide a copy of all subcontractor agreements and/or other verification of the total amount to be paid to each subcontractor prior to commencement of work.

X Monitoring

To ensure compliance with the program the contractor must ensure that the City has the right to review all records and documents of the contractor, as well as all subcontractors. Failure to allow the City to review the records may result in a penalty of 1% of the contract amount or \$1,000 per day, whichever is less. Such refusal shall be deemed a material breach of contract which may result in termination of the contract. In addition, the contractor or subcontractors may be debarred from participating in future City contracts.

No substitution can be made of a listed small local business subcontractor, trucker, manufacturer, supplier and owner operator of equipment without the approval of the City.

Should the prime contractor fail to achieve the SLBE participation listed at the time the contract is awarded, the City may impose a penalty equal to the amount that should have been awarded to SLBE.

Contractors must provide Exhibit C, with each progress payment indicating payments made to SLBEs in order to receive subsequent progress payments.

XI. Protest Procedure

The bidder has five (5) working days from the bid opening date to protest the bid under these provisions. The protestor must state the nature of the protest and cite the section(s) of the Program that has been violated.

In the event a determination is made that the apparent low bidder has not made a good faith effort to achieve the Oakland based Small Local Business Enterprise participation goal, said party shall have the right to protest such determination before the City Council. The City shall notify said party by certified or registered mail of the date when the City Council will consider the rejection of the bid of the apparent low bidder and also hear and consider the protest. If the Council sustains the determination that a good faith effort was not made, the Council shall award the contract to lowest responsible bidder.

XII Severability

In the event any provision of this Program shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Program but the same shall be construed and enforced as if said illegal or invalid provision had never been inserted herein.

Revised 7/5/94

SMALL BUSINESS SIZE STANDARDS OF SBA

GENERAL Unless otherwise specifically stated in one of the following tables a business is considered small if its average annual receipts for the last 3 fiscal years do not exceed \$7.5 million

CONSTRUCTION Small if its average annual receipts for the last 3 years do not exceed \$17 million
ENGINEERING SERVICE Small if its average annual receipts for preceding 3 fiscal years does not exceed \$14 million
TRUCKING, CAR AND TRUCK RENTAL If annual receipts NOT THE AVERAGE OF 3 YEARS DOES NOT EXCEED \$7.5 million

TRADE	Average Annual Receipts for previous 3 years in Millions \$ Not to Exceed	TRADE	Average Annual Receipts for previous 3 years in Millions \$ Not to Exceed
CONSTRUCTION Special Trade Contractors			
Carpeting and Flooring	\$7.5	Base Maintenance	\$7.0
Concrete Work	\$7.5	Cleaning & Dyeing (including rug cleaning services)	\$1.5
Electrical Work	\$7.0	Computer Maintenance Services	\$7.0
Excavating and Foundation Work	\$7.0	Computer Programming Services	\$4.0
Floor Laying and Other Floor Work	\$7.0	General Construction (Prime Contractors)	\$17.0
Glass and Glazing Work	\$7.0	Data Processing Services	\$4.0
Installation or Erection of Building Equip		Dredging (at least 40% yardage advertised in plans or specs, or 40% must be done with equipment not owned by dredging concerns)	\$13.5
Masonry, Stone Setting & Other Stone Work	\$7.0	Professional Architectural & Engineering Svc	\$2.5
Painting Paperhanging & Decorating	\$7.0	Food Services	\$3.5
Plastering Drywall, Acoustical & Insulation Work	\$7.0	Janitorial & Custodial Services	\$4.5
Plumbing Heating (Except Electric) & Air Conditioning	\$7.0	Laundry Services (includes linen supply, diaper services)	\$4.0
Roofing & Sheetmetal Work	\$7.0	Industrial laundering	
Special Trade Contractors Not Elsewhere Classified	\$7.0	Motorcar Rental & Leasing Services (includes truck rental & leasing services)	\$7.0
Structural Steel Erection	\$7.0	Services General (any services not specifically defined in SBA regulations)	\$2.0
Terrazzo Tile Marble & Mosaic Work	\$7.0		
Water Well Drilling	\$7.0		
Wrecking & Demolition Work	\$7.0		

NOTE If a business has affiliates, it is small if it is

- 1 Independently owned and operated
- 2 Not dominant in its field
- 3 Has less than 500 employees

GENERAL CONSIDERATIONS

Industrial Bldgs and WAI
 Non residential bldgs, other than industrial bldg and WAI (KHI)
 Highway and Street Construction except elevated highways
 Bridge tunnel & elevated highways construction
 Water & sewer pipelines, communications and power line construction
 Heavy construction except dredging, NEC

The Contractor herewith submits a complete list of Subcontractors to be used on the project. The Contractor agrees that no changes will be made in this list without the approval of the Director of Public Works.

Print/Type Company Name

Note

1 Subcontractor Listing:

Signed

List all Subcontractors with values greater than one half of one percent to be used on the project by name address, type of work dollar amount, and check appropriate box (es) if minority owned, women owned, or small local business enterprise Also all MBE/WBE/SLBE companies, regardless of tier, must be listed in order for their participation to be counted toward the program goals including those whose dollar amount is less than one half of one percent

[illegible]

Attach additional page if required

Print/Type Company Name

Supplier Listing | **Signed**

[illegible]

Revised 8/5/96

AFFIDAVIT OF NON-DISCRIMINATION

I certify that the EEOC DFEH or the OFCCP has not taken disciplinary or investigatory action against the Firm. If such action has been taken attached hereto is a detailed explanation of the reason for such action, the party instituting such action and the status or outcome of such action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signature

Date

In witness whereof, the undersigned has executed this instrument this
day of _____, 199__

Signature

Title

Name of Firm

Street Address

City State & Zip Code

Subscribed and sworn to before me this _____ day of _____ 199__

Notary Public

My Commission expires _____

**CONTRACTOR'S CERTIFICATION CONCERNING THE CITY OF OAKLAND AND
REDEVELOPMENT AGENCY MINORITY AND WOMEN BUSINESS ENTERPRISE
CONSTRUCTION PROGRAM AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM**

I _____ representing _____
(Name) (Company)

certify that I have read the City of Oakland and Redevelopment Agency Minority and Women Business Enterprise Construction Program and Small Local Business Enterprise Program and that I have achieved the goals of 30% Minority Business Enterprise (MBE), 5% Women Business Enterprise (WBE) and 20% Small Local Business Enterprise (SLBE), or can provide documentation of a "Good Faith" to achieve the goals of the Programs

The minimum "Good Faith Effort" steps for the MBE/WBE/SLBE Programs are as follows:

1. Advertise in three (3) publications (for MBE/WBE Program, a local newspaper, a minority/woman business publication and a major business publication) (for SLBE Program; 2 local newspapers and a small local publication). The advertisement in such publications should appear two weeks prior to submittal of bid. The advertisement must include solicitation for the participation of Minority/Women/Small Local Business Enterprises (MBE/WBE/SLBE). The advertisement must describe the type of work being solicited and give the name and telephone number of a contact person with knowledge of the project.
2. Two (2) weeks prior to the bid due date letters must be sent certified return receipt requested to MBE/WBE/SLBE businesses. The letter must describe the scope of work, work being solicited, insurance requirements, contact person with knowledge of the project, when bids are due and where specifications and plans can be obtained. As a minimum, the contractor shall send three (3) letters to minority businesses one (1) letter to women businesses and (4) letters to small local businesses for each trade or category of work.
3. Two (2) weeks prior to the bid due date letters should be sent certified return receipt requested to MBE/WBE/SLBE business associations and development centers or any other related agency which disseminates bid information to MBE/WBE/SLBE businesses. Letters must be sent to a minimum of four (4) organizations and contain the information stated in item number 2 above.
4. Describe efforts to enter into joint venture arrangements with MBE/WBE/SLBE businesses. Provide a description of efforts to enter into joint venture arrangements.

5. Describe assistance provided to MBE/WBE/SLBE businesses relative to
- a) Review of specifications and plans or documents issued by the City,
 - b) Review of work to be performed by the subcontractors;
 - c) Describe or document efforts undertaken to encourage majority subcontractors to utilize MBE/WBE/SLBE businesses;
 - d) Document any other efforts undertaken by the prime contractor to encourage the participation of MBE/WBE/SLBE businesses; and
 - e) Report responses and proposals received from MBE/WBE/SLBE businesses. This report should indicate the actions taken by the prime contractor in response to the proposals received from MBE/WBE/SLBE businesses and from joint ventures which include MBE/WBE/SLBE businesses. In cases where proposals have been rejected by the prime contractor the reason(s) for rejection shall be indicated.

(SIGNATURE)

(TYPE NAME & TITLE)

(SIGNATURE)

(TYPE NAME & TITLE)

Attachment I

**City of Oakland and Redevelopment Agency Affirmative Action Employment Program and Local
Employment Program for Public Works Contracts**

**CITY OF OAKLAND
AFFIRMATIVE ACTION PROVISIONS
FOR PUBLIC WORKS CONTRACTS**

**AFFIRMATIVE ACTION CONSTRUCTION
EMPLOYMENT PROGRAM**

Objective

To insure that discrimination shall not occur in the employment of persons on public works projects because of race, color, religion, sex or national origin

II. Definitions

- (1) **Minority Group Member** - a person who is Black, Hispanic, Asian or Pacific Islander, or American Indian or Alaskan Native
 - a) **Black** - all persons having origins in any of the Black racial groups of Africa
 - b) **Hispanic** - all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race. Only those persons from Central and South American countries who are of Spanish origin, descent, or culture are included in the Hispanic category. Persons from Brazil, Guyana and Trinidad would be classified according to their race, and would not necessarily be included in the Hispanic category. The Portuguese are excluded from the Hispanic category, and are to be classified according to their race
 - c) **Asian or Pacific Islander** - all persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands
 - d) **American Indian or Alaskan Native** - all persons having origins in any of the original peoples of North America, and who maintain cultural identifications through tribal affiliation or community recognition
- 2 **Contractor** - the individual, partnership, corporation, joint venture, or other legal entity entering into a contract with the City of Oakland
- 3 **Subcontractor** - the individual, partnership, corporation or other legal entity entering into a contract with the contractor to perform a portion of the work

III General Provisions

- 1 City Policy - The City shall require its contractors to abide by the Affirmative Action Employment Program for public works contracts. The City shall also require that the contractor enforce the provisions of the Affirmative Action Employment Program on any and all parties with whom the contractor intends to enter into a contract to perform any portion of said work.

The Office of Public Works will actively monitor compliance with the Affirmative Action Employment Program and will submit a monthly report to the City Manager on the status of all public works contracts.

- 2 Contractors and subcontractors - the Affirmative Action Employment Plan required by the City of Oakland shall be deemed a part of the resulting contract specifications. A successful bidder shall cause the Affirmative Action Employment Plan, as established and approved, to be a part of all subcontracts, regardless of tier, under the contract. Any subcontract executed without an approved Affirmative Action Employment Plan as part of the subcontract shall be voided. In addition to the development of a written Affirmative Action Employment Plan, the contractor as well as each subcontractor regardless of tier, shall ensure that minorities, women, and Vietnam Era Veterans have an equal opportunity for selection as apprentices.

IV. Requirements for Written Affirmative Action Employment Plan

1. **Contracts less than \$10,000.00**

For contracts less than \$10,000.00, contractors must complete the Statement of Certification of Compliance with the Affirmative Action Employment Program. This certification shall be included as part of the bid. A written Affirmative Action Employment Plan is not required for contracts under \$10,000.00. The contractor, and any subcontractors, shall submit weekly payroll records which include a craft-by-craft breakdown of minority and female employees.

2. **Contracts \$10,000.00 or over**

The contractor shall not be eligible for award of a contract under these bid provisions unless a written Affirmative Action Employment Plan has been submitted and approved by the Director of Public Works. The contractor shall be required to submit the written Affirmative Action Employment Plan to the Office of Public Works within ten (10) working days of the notification that the contractor is the apparent low bidder.

V. Affirmative Action Plan

Prior to entering into their respective contracts, the contractor and any and all subcontractors shall complete, when requested by the City, questionnaires for presentation to the City detailing the anticipated number of total employees required to perform the respective contracts. This shall be done by classifying journeymen, apprentices and trainees on a craft-by-craft basis in terms of person-days or person-hours.

These questionnaires shall also include an anticipated number of employees in each classification who are to be minority group members, and women, and a timetable for hiring the same. This timetable shall include as a minimal goal, a work force consisting of 50% minorities on a craft-by-craft basis.

The City of Oakland receives Federal funds in its construction programs and pursuant to Title 41, 604 as amended in 1978, the City is required to set a goal for the participation of women on a craft-by-craft basis. The goal for women shall be 31 percent from May 1978 - May 1979, 5 percent from May 1979 - May 1980 and 69 percent from May 1980 - May 1981. This goal will be in addition to the 50% goal for minority utilization, however, any ethnic minority woman may, for the purpose of this contract, be double counted.

The percentage of minority and women utilization shall be expressed in terms of person-hours to be worked. The person-hours for minority or women employees must be substantially uniform throughout the length of the contract for each of the trades. The transfer of minority or women employees and trainees from employer to employer or from project to project for the sole purpose of meeting the contractor's or subcontractor's goal shall be a violation of these conditions and subject to the sanctioning provisions of this contract.

Opportunities for training and employment shall be given to low income residents of the City of Oakland.

The contractor or subcontractor will not discriminate against any employee or applicants for employment because of race, color, religion, sex, or national origin. The contractor or subcontractor will take affirmative action to ensure that applicants are employed and that employees are treated without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships.

The contractor or subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause

The contractor or subcontractor will comply with all provisions of Executive Order No 11246 as amended which pertains to goals and timetables for female and minority participation in the construction industry

The affirmative action steps described in the contractor's Affirmative Action Employment Plan must meet the requirements of the City's goals and timetables for all trades which are to be utilized on the project, whether subcontracted or not. The Affirmative Action Employment Plan will be reviewed and approved by the Director of Public Works provided that it is a realistic, workable program for affirmative action and contains the elements set forth in the Affirmative Action Employment Program

When other rules, regulations and relevant orders are required, or projects funded from Federal or State moneys, the contractor or subcontractor will comply with these requirements and permit access to the contractor's or subcontractor's records for the purpose of ascertaining compliance with such rules, regulations and orders

VI COMPLIANCE PROCEDURES

The contractor must submit the contractor's and subcontractor's weekly payroll records for all crafts covered under these contract provisions within five (5) working days of the end of the payroll period. The records must show the person-hours on a craft-by-craft basis and identify the ethnic composition and sex of all employees on the project. All reports must be signed by an officer of the company

The Director of Public works shall review or cause to be reviewed, the contractor's and subcontractor's employment practices during the performance of the contract. Violation of any substantial requirement of the terms of the Affirmative Action Employment Plan submitted by the contractor or a subcontractor shall be deemed to be non-compliance by such contractor or subcontractor with the Affirmative Action Employment Program provisions of the contract. Compliance will be measured from the initial day of performance under the contract.

Each contractor or subcontractor shall be given the opportunity to demonstrate to the satisfaction of the Director of Public Works that they have instituted the Affirmative Action Employment Plan and have made every "good faith effort" to attain the goals and timetables described in the Plan. Good faith efforts should include, but are not limited to the following steps:

- 1 The contractor and subcontractor shall notify community organizations when the contractor or subcontractor has employment opportunities available and shall maintain records of the organizations' responses. In accordance with Executive Order No. 11375, all solicitations or advertisements for employees will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 2 The contractor or subcontractor shall maintain a file of the names and addresses of each minority worker and woman referred. The file shall indicate what action was taken with respect to each referred person, and if the person was not employed, the reasons therefore. If such person was not sent to a union hall for referral or if such person was not employed by the contractor or subcontractor, the file shall document this and the reasons therefore.
- 3 The contractor and subcontractor shall promptly notify the City of Oakland when the union or unions with whom the contractor or subcontractor has a collective bargaining agreement has not referred to the contractor or subcontractor, a minority worker or woman requested by the contractor or subcontractor, or when the contractor or subcontractor has other information that the union referral process has impeded efforts to meet the goal.
- 4 The contractor and subcontractor shall participate in minority and women employment training programs in the area, especially those funded by the Department of Labor. Special emphasis will be placed on entry of women in the construction trades through participation in apprenticeship programs.
- 5 The contractor and subcontractor shall disseminate equal employment opportunity and affirmative action policy within their own organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, or other company publications, by conducting staff, employee and union representative's meetings to explain and discuss the policy with minority employees.
- 6 The contractor and subcontractor shall disseminate equal employment opportunity and affirmative action policy externally by discussing it with all recruitment sources, by advertising in news media, specifically including minority news media, and notifying and discussing it with all subcontractors and suppliers.

- 7 The contractor and subcontractor shall make constant written and oral recruitment efforts directed at all minority organizations, schools with minority students, minority recruitment organizations, minority training organizations, and relevant women organizations, within the contractor and subcontractor's recruitment area
- 8 The contractor and subcontractor shall validate all personnel specifications, selection requirements, and tests to ensure they do not have a discriminatory effect
- 9 The contractor and subcontractor shall make every effort to promote after-school, summer and vacation employment for minority youth
- 10 The contractor and subcontractor shall develop on the job training opportunities and participate and assist in any association or employer-group training program relevant to the contractor or subcontractor's employee needs
- 11 The contractor and subcontractor shall continually review and evaluate all minority and women personnel for promotional opportunities, and shall encourage these employees to seek such opportunities
- 12 The contractor and subcontractor shall make sure that seniority practices and job classifications do not have a discriminatory effect.
- 13 The contractor and subcontractor shall make certain that all facilities and company activities are non-segregated
- 14 The contractor and subcontractor shall continually monitor all personnel activities to ensure that the equal employment opportunity and affirmative action policies are being carried out

If the contractor or subcontractor demonstrates that the goals for minority and women employment have been met, or has provided evidence to show that the "good faith efforts" have been met, the contractor or subcontractor shall be presumed to be in compliance with its obligation under the terms of this Program and no further sanctions or proceedings leading toward sanctions shall be instituted. When the Director of Public Works finds, and the City Manager concurs, that the contractor or subcontractor has failed to comply with the requirements, and its obligations under the Affirmative Action Employment Program, the City Manager will take such action and impose such sanctions as may be appropriate. When the City Manager proceeds with such formal action declaring the contractor or subcontractor out of compliance, the City has the burden of proving that the contractor or subcontractor has not met the goals of the Affirmative Action Employment Program.

The City Manager has the power, in addition to any other remedy the City may have under this contract or by operation of laws, to cancel or suspend the contract in whole or in part, with continuance thereof conditioned upon a satisfactory showing to the City Manager of the contractor's ability to comply. In the event that a non-compliance determination is made, the City Manager may impose a monetary penalty in an amount not to exceed \$1,000.00 or one (1) percent of the amount of the contract, whichever is less, for each working day of noncompliance, regardless of the number of separate acts of non-compliance by the contractor or subcontractor existing on a particular day. In addition, the contractor or subcontractor may be declared ineligible for further City contracts.

The formal notification procedure to be followed in the event of non-compliance on the part of the contractor or subcontractor shall be as follows:

1. The Director of Public Works shall cause to be delivered a "Written Notice of Noncompliance" to the contractor and to the subcontractor involved, if any. This notice shall specify the matters which constitute the noncompliance, the specific action required to correct the noncompliance, and the time period during which such correction shall occur. In no event shall this be more than ten (10) working days after receipt of the notice by the contractor.
2. The contractor and the subcontractor involved, if any, shall submit such oral and documentary evidence to the Director of Public Works as is reasonably required to establish compliance with the notice of the City.
3. In the event the Director of Public Works agrees that compliance has occurred, the Director shall cause to be delivered promptly to the contractor and subcontractor involved, if any, a "Written Notice of Correcting a Noncompliance" specifying the original noncompliance which has been corrected.
4. In the event the Director of Public Works does not agree that compliance has occurred, the Director shall promptly notify the contractor or subcontractor involved, if any, by a "Written Notice of Failure to Correct a Noncompliance," of the specific facts constituting the continuing noncompliance.
5. In the event the contractor or subcontractor involved, if any, in good faith contends that they are in compliance and the Director of Public Works does not concur, then the contractor or subcontractor involved shall have the right to request a hearing before the City Council which shall make the final determination. The request for a hearing before the City Council must be made within a period of ten (10) working days after receipt of the "Written Notice of Failure to Correct a Noncompliance."

- 6 In the event no such request is made, the final determination of noncompliance shall be made by the City Manager
- 7 Should the contractor or subcontractor involved, if any, fail to comply with the "Written Notice of Noncompliance" within the time period specified by the Director of Public Works, and a final determination of noncompliance is subsequently made, the contractor or subcontractor involved, shall pay the amount of any such penalty commencing with the first day of noncompliance and continuing until compliance is established to the satisfaction of the City Manager or City Council, whichever imposed the penalty, or until the work of the non-complying contractor or subcontractor under such contract is completed, or the contract of the contractor or subcontractor is terminated, whichever shall occur first

VII Other Conditions

- 1 All laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part by Federal funds will comply with the provisions of the Davis-Bacon Act, as amended. In addition, all laborers and mechanics shall receive overtime compensation in accordance with the provisions of the Contract Work Hours and Safety Standards Act
- 2 Contractors and subcontractors will comply with the appropriate provisions of the California State Labor Code regarding the required ratio of apprentices to journeymen on the job site
- 3 Notwithstanding any other requirements of the Affirmative Action Employment Program, if a supplier or pre-fabricator conducts any work at the job site in the course of supplying goods, materials, equipment or other supplies, or in the pre-fabrication of those items, then without regard to technical distinction or classification, supplier or pre-fabricator's employees on the jobsite shall be deemed a "work force" for which the hiring practices described in the Affirmative Action Employment Program shall apply. Contractors and subcontractors shall attempt to perform all fabrication, assembly and other supply-related or pre-fabrication-related work at the jobsite whenever possible and consistent with competitive costs and good construction practices

VIII Pre-Award Conference

Prior to award of the contract, the contractor and any and all anticipated subcontractors must meet with representatives of the City, at which time the contractor's Affirmative Action Employment Plan and the Affirmative Action Employment Plan of any and all prospective subcontractors on the job, will be discussed, evaluated and reviewed by the City's representatives in the light of the requirements and goals of the City's Affirmative Action Employment Program. Contractor associations, including minority representatives, community organizations and relevant women organizations will be invited to attend the pre-award conferences. A waiver of the pre-award conference may be granted to those contractors who have demonstrated a consistent ability to comply with the goals of the City's Affirmative Action Employment Program.

**CITY OF OAKLAND
AND
REDEVELOPMENT AGENCY
LOCAL EMPLOYMENT PROGRAM
FOR PUBLIC WORKS CONTRACTS**

OBJECTIVE

In order to counteract grave economic and social ills, and spiraling unemployment, and to increase the number of employed persons living in Oakland, all of which is in substantial degree caused by the influx of non-Oakland residents, the City of Oakland establishes this carefully and narrowly tailored, Local Employment Program for Public Works Contracts (Program) without unreasonably harming non-residents

II Definitions

- A. City - reference to the City includes the Redevelopment Agency, and reference to the City Manager includes the Agency Administrator with regards to this Program
- B. Contractor - the individual, partnership, corporation, joint venture or other legal entity entering into a contract with the City
- C. Developer - a person or entity who prepares real property for development or redevelopment
- D. Public Works Contracts - any construction alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds or by a Developer who receives City subsidy, be it financial or otherwise
- E. Resident - any person whose primary residence is in Oakland
- F. Subcontractor - any and all parties with whom the developer and contractor intends to enter into a contract to perform a portion of any said work regardless of tier

Local Employment Program

III Goals

For any construction contract or developer agreement with the City of Oakland or Redevelopment Agency, collectively referred to as the City, there is hereby established for employment at the construction site, the goals that 40% of the work hours shall be furnished by Oakland residents on a craft-by-craft basis, and that all new hires must be Oakland residents. A contractor or developer must achieve the goals or document a good faith effort to achieve the goals.

IV General Provisions

- A. The City shall require its developers and contractors to abide by the Program. The City shall also require that the developers and contractors enforce the provisions of the Program on any and all parties with whom the developers and contractors intended to enter into a contract to perform any portion of said work.

The Office of Public Works will actively monitor compliance with the Program and will submit a monthly report to the City Manager on the status of all public works contracts.

- B. The Program required by the City and Redevelopment Agency shall be incorporated in all Disposition and Development Agreements (DDA) and contract specifications. The developer or contractor shall cause the Program as established and approved, to be a part of all subcontracts, regardless of tier or phase, under the contract. The goals set forth must be maintained for the duration of the project.

V Methods of Achieving Compliance

To comply with the Program the developer or contractor, as defined in Section II of the Program, shall select one of the two methods stated below. The selected Method by the developer or contractor shall be followed by all parties with whom they intend to enter into a contract to perform any portion of work. The developer or contractor shall complete a form entitled, Method Selected for LEP Program Compliance.

Local Employment Program

A. Method One

- 1 Prior to commencing any phase of work, the developer or contractor shall choose its own method of complying with the goals on a craft-by-craft basis for all new hires. This shall include using union hiring halls.
- 2 Should the developer, contractor or subcontractor be unable to achieve the goals, the contractor or subcontractor shall go to the City for all of their employment needs prior to commencement of any work.
- 3 The City shall refer for employment qualified persons to the contractor or subcontractor within three (3) business days of their request. The contractor or subcontractor must employ all of the persons referred.
- 4 Should the City be unable to provide the employees needed, the developer or contractor would be relieved of their obligation to achieve the goals of the Program.
- 5 No documentation of "Good Faith Effort Steps" would be required of the developer or contractor.
- 6 No penalty would be assessed.
- 7 The contractor or subcontractor must go back to the City whenever their employment needs increase and they are unable to comply with the Program.
- 8 Failure by the developer, contractor or subcontractor to comply with this Method will result in a penalty of \$1,000 per day or one percent (1%) of the contract amount, whichever is less, and shall be deemed a material breach of a contract for which termination of a contractor or DDA may result. In addition, the developer, contractor or subcontractor may be debarred from participation on future City projects.

Local Employment Program

B Method Two

- 1 The developer or contractor can choose its own method of complying with the goals on a craft-by-craft basis and for all new hires. This shall include using union hiring halls.
- 2 Should the developer, contractor or subcontractor fail to achieve the goals at any time during the course of this project, the developer, contractor or subcontractor is required to document compliance with each and every one of the "Good Faith Effort Steps" as listed in Section IX of the Program.
- 3 Should the developer, contractor or subcontractor fail to document the "Good Faith Effort Steps" a penalty of \$1,000 per day or one percent (1%) of the contract amount, whichever is less, and will be assessed against the developer or contractor. Also, it shall be deemed a material breach by the contractor for which termination of contractor or DDA may result. In addition, the developer or contractor may be debarred from participation on future City projects.

VI Compliance Procedures

The following Exhibits shall be completed to ensure compliance with the Program goals. The developer or contractor shall submit the forms listed below no later than five (5) working days after award of contract.

- 1 Exhibit A, LEP Program Method Selection Form. The developer or contractor must select one of the two methods detailed under Section V (A&B) to achieve the Program goals.
- 2 Exhibit B, Anticipated Workforce Projection Form. Prior to commencement of any work on the project, the developer, contractor and each subcontractor shall complete Exhibit B for presentation to the City detailing the anticipated number of total employees required to perform work on the project. The Form shall reflect the total person hours by journeyman and apprentice on a craft-by-craft basis, and the Oakland resident hours on a craft-by-craft basis.

Local Employment Program

- 3 Exhibit C, Crafts Utilized for Project Form The contractor and each subcontractor shall complete Exhibit C, identifying the anticipated number of employees in each classification who are to be local residents
- 4 Exhibit D, List of Current Employees Form The contractor and each subcontractor shall complete Exhibit D and submit a copy of their firm's last quarter employee tax statement Those persons whose names appear on the last quarter employee tax statement will not be considered a new hire for this project
- 5 Exhibit E, Letter of Compliance The developer, contractor and their subcontractors shall submit Exhibit E on their company letterhead

The percentage of local resident utilization shall be expressed in terms of person-hours of employment as a proportion of the total person-hours to be worked The person-hours for local employees must be substantially uniform throughout the length of the contract for each of the trades The transfer of local employees from employer to employer or from project to project for the sole purpose of meeting the Program goals shall be a violation of these conditions and subject to the sanctioning provisions of this Program However, this does not preclude the employees from transferring from employer to employer or project to project

VII Weekly Submittal of Payroll Reports

The developer or contractor, and their subcontractors must submit weekly payroll records for all crafts covered under these Program provisions within five (5) working days of the end of each payroll period the records must show the person-hours on a craft-by-craft basis and identify the address, social security number, ethnicity, gender, and trade (journey person or apprentice) of all employees on the project All reports must be signed by an officer of the company

Local Employment Program

VIII Monitoring

The Director of Public Works shall review or cause to be reviewed, the developer's contractor's and their subcontractor's employment practices during the performance of the work. Failure to provide any of the above mentioned documents or misrepresentations in such documents, shall be deemed to be non-compliance by such developer or contractor with the Program provisions. Compliance will be measured from the initial day of performance under the contract and must continue for the duration of the contract. On-site visits will be conducted by the City and will consist of interviewing employees and reviewing employees' drivers license. The City has the right to interview employees without prior consent of the developer, contractor or subcontractor.

IX Good Faith Effort

In the event the developer or contractor selects Method One, the developer or contractor must go back to the City whenever its employment needs increase and they are unable to comply with the Program. In the event the developer or contractor selects Method Two, for compliance with the Program, the developer or contractor shall be given the opportunity to demonstrate to the satisfaction of the Director or Public Works that they have complied with the Program or have made every "good faith effort" to attain the goals. Good faith efforts should include, as a minimum, but are not limited to the following steps:

- a. The developer, contractor and their subcontractor shall notify, in writing, construction unions community organizations when the developer, contractor and their subcontractors have employment opportunities available and shall maintain records of the organizations' responses. In accordance with Executive Order 11375, all solicitations or advertisements for employees will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or nation origin.

Local Employment Program

- b The developer, contractor and their subcontractors shall maintain a file on the job site of the names and addresses of each local worker referred. The file shall indicate what action was taken with respect to each referred person, and if the person was not employed, the reasons therefore. If such persons was not sent to a union hall for referral, or if such persons was not employed by the developer, contractor and their subcontractors the developer's contractor's and their subcontractor's file shall document this and the reasons therefore. The City shall have the right to review employee files during normal working hours.
- c The developer, contractor and their subcontractors shall promptly notify the City, in writing, when the union or unions with whom the developer, contractor and their subcontractors have a collective bargaining agreement with, and the union has not referred to the developer, contractor and their subcontractors, a local worker requested by subcontractors. The developer's contractor's and their subcontractors request from the various Union Halls will be in writing. No other agreement in which the developer contractor or subcontractor has entered into will relieve the developer, contractor or subcontractor from the City's Program for City contracts.
- d The developer, contractor and their subcontractors shall participate and provide documentation of such participation in state approved local employment training programs in the area, wherever possible. Special emphasis will be placed on entry of Oakland residents in the construction trades through participation in apprenticeship programs.
- e The developer, contractor and their subcontractors shall disseminate its local employment policy within their own organization by including it in any policy manual, by publicizing it in company newspapers, annual reports, or other company publications, and by conducting staff, employee and union representative's meetings to explain and discuss the policy with their employees. The above publication must be provided to the City within five (5) working days of publication.

Local Employment Program

- f The developer, contractor and their subcontractors shall disseminate its local employment policy externally by discussing it with all recruitment sources, by advertising in news media, specifically including local news media, and notifying and discussing it with all subcontractors and suppliers. Documentation of such dissemination to be provided to the City within five (5) working days of such dissemination
- g The developer, contractor and their subcontractors shall make constant written and oral recruitment efforts directed at all Oakland organizations, construction unions, schools and colleges, local recruitment organizations and local training organizations City shall receive a copy of all correspondence
- h The developer, contractor and their subcontractors shall validate all personnel specifications, selection requirements and tests to ensure they do not have a discriminatory effect
- i The developer, contractor and their subcontractors shall develop on the job training opportunities and participate and assist in any association or employer-group training program relevant to the developer's contractors and their subcontractor's employment needs These training opportunities shall adhere to the apprenticeship standards as specified by the State of California or to entry labor standards as specified in the Davis Bacon Act The developer, contractor and their subcontractors shall contact all organizations listed in Exhibit F which is a list of Construction Training and Employment Organizations The City shall receive a copy of all correspondence
- j The developer, contractor and their subcontractors shall continually review and evaluate their personnel and promotional opportunities, and shall encourage local residents and local employees to seek such opportunities The developer, contractor and their subcontractors shall provide the City with documentation of these efforts
- k The developer, contractor and their subcontractors shall make sure that their employment practices and job classifications do not have a discriminatory effect

Local Employment Program

- I The developer, contractor and their subcontractors shall continually monitor all personnel activities to ensure that local goals are being met. The method of monitoring the Program is to be presented to the City of Oakland within ten (10) working days after award of contract.

If the developer, contractor and their subcontractors demonstrates that the goals for local employment have been met, or has provided evidence to show that the above "Good Faith Effort Steps" have been met, the developer or contractor shall be presumed to be in compliance with its obligation under the terms of this Program and no sanctions or proceedings leading toward sanction shall be instituted.

X Non-Compliance

The Director of Public Works shall determine whether a developer or contractor has complied with the requirements of the Program. If the Director determines that the developer or contractor failed to comply with the Program, the developer or contractor has the burden of proving compliance with the Program and its obligations under the Program.

The City Manager has the power, in addition to any other remedy the City may have under this contract or by operations of law, to suspend the contract in whole or in part, with continuance thereof conditions upon a satisfactory showing to the City Manager of the developer's or contractor's ability to comply.

The formal notification procedure to be followed in the event of non-compliance on the part of the developer or contractor shall be as follows:

- A) The Director of Public Works shall cause to be delivered a "Written Notice of Non-Compliance" to the developer or contractor. This notice shall specify the matters which constitute the non-compliance, the specific action required to correct the non-compliance, and the time period during which such correction shall occur. In no event shall this be more than ten (10) working days after receipt of the notice of the developer or contractor.

Local Employment Program

- B) The developer or contractor shall have the burden of proving compliance with the program and shall submit written evidence of the Director of Public Works to establish compliance
- C) In the event the Director of Public Works agrees that compliance has occurred the Director shall cause to be delivered promptly to the developer or contractor a "Written Notice of Correcting a Non-Compliance" specifying the original non-compliance which has been corrected
- D) In the event the Director of Public Works does not agree that compliance has occurred, the Director shall promptly notify the developer or contractor by a "Written Notice of Failure to Correct a Non-compliance", of the specific facts constituting the continuing non-compliance
- E) In the event the developer or contractor contends that they are in compliance, and the Director of Public Works does not concur, then the developer or contractor shall have the right to request a hearing before the City Manager, or his designee, who shall make the final determination. The request for a hearing before the City Manager must be made within a period of ten (10) working days after receipt of the "Written Notice of Failure to Correct a Non-compliance". The developer or contractor must exhaust this administrative remedy prior to commencing further legal action.
- F) In the event no such request is made, the determination of failure to correct a non-compliance by the Director of Public Works shall be final
- G) Should the developer or contractor fail to comply with the "Written Notice of Non-compliance" within the time period specified by the Director of Public Works, and a final determination of non-compliance is subsequently made, the developer or contractor, shall pay the amount of any such penalty commencing with the first day of non-compliance and continuing until compliance is established to the satisfaction of the City Manager or until the work of the non-complying developer or contractor under such contract is completed, or the contract of the developer or contractor is terminated, whichever shall occur first

Local Employment Program

- H) In the event that a non-compliance determination is made, the City Manger may impose a monetary penalty in an amount not to exceed \$1,000 00 or one percent (1%) of the amount of the contract, whichever is less, for each working day of non-compliance, regardless of the number of separate acts of non-compliance by the developer or contractor existing on a particular day. In addition, the developer or contractor may be debarred from participating in future City projects.

XI Other Conditions

- A) Developers or contractor will comply with the appropriate provisions of the California State Labor Code regarding the required ration of apprentices to journeyperson(s) as defined therein on the job site.

XII Program Amendments

The City Manger may make changes to this Program as necessary to implement and achieve the goals of the program.

XIII Judicial Order

The provisions of this program shall not be enforced to the extent that such enforcement results in a developer, contractor or subcontractor violating a dully entered consent decree or other judicial order.

XIV Severability

In the event any provision of this Program shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Program but the same shall be construed and enforced as if said illegal or invalid provision had never been inserted herein.

EXHIBIT A
Local Employment Program
for
Public Works Projects
Method Selection Form

To comply with the Program, the developer or contractor, as defined in Section II of the Program, shall select one of the two methods stated below. The selected Method by the developer or contractor shall be followed by all parties with whom they intend to enter into a contract to perform any portion of work. The developer or contractor shall complete a form entitled, Method Selected for LEP Program compliance.

☐

Method One

- 1 Prior to commencing any phase of work the contractor or subcontractor shall choose its own method of complying with the goals on a craft-by-craft basis and for all new hires. This may include using union hiring halls.
- 2 Should the developer, contractor or subcontractor be unable to achieve the goals, the contractor or subcontractor shall go to the City for all of their employment needs prior to commencement of any work.
- 3 The City shall refer for employment qualified persons to the contractor or subcontractor within three (3) business days of their request. The contractor or subcontractor must employ all of the persons referred.
- 4 Should the City be unable to provide the employees needed, the developer or contractor would be relieved of their obligation to achieve the goals of the Program.
- 5 No documentation of "Good Faith Effort Steps" would be required of the developer or contractor.
- 6 No penalty would be assessed.
- 7 The contractor or subcontractor must go back to the City whenever their employment needs increase and they are unable to comply with the program.
- 8 Failure by the developer, contractor or subcontractor to comply with this Method will result in a penalty of \$1 000 per day or one percent (1%) of the contract amount, whichever is less and shall be deemed a material breach of a contract for which termination of a contract or DDA may result. In addition the developer contractor or subcontractor may be debarred from participation on future City projects.



Method Two

- 1 The developer or contractor or subcontractors can choose its own method of complying with the 40% Local Employment Program goal on a craft-by-craft basis and all new hires This may include using union hiring halls
- 2 Should the developer, contractor or subcontractor fail to achieve the goals at any time during the course of this project, the developer, contractor or subcontractor is required to document compliance with each and every one of the "Good Faith Effort Steps" as listed in Section IX of the program
- 3 Should the developer, contractor or subcontractor fail to document the "Good Faith Effort Steps" a penalty of \$1,000 per day or one percent (1%) of the contract amount, whichever is less, and will be assessed against the developer or contractor Also, it shall be deemed a material breach by the contractor for which termination of contract or DDA may result In addition, the developer or contractor may be debarred from participation on future City projects

The undersigned understands that should they be found to be in noncompliance by the City, the City Manager is authorized to impose a monetary penalty or suspend the contract in whole or part until satisfactory evidence is provided of compliance In addition to any other remedy that the City may have under this contract, the developer, contractor and their subcontractors may be debarred from participation on future City projects

Company Name

Owner/Authorize(d) Representative Signature

Address

The developer or contractor shall submit this form within five (5) working days after award

EXHIBIT B

J = JOURNEYMAN
A = APPRENTICE
EMPL. = EMPLOYED
RES = RESIDENT

A = APPRENTICE
EMPL. = EMPLOYEE
PRES. = PRESIDENT

DATE _____
NAME OF FIRM: _____
SIGNATURE _____

[illegible]

Indicate above the number of employees permanent temporary or otherwise for each of the categories anticipated to be hired during the term of this contract and the date(s) for which the employee(s) are expected to be hired

The developer or contractor shall submit this form within five (5) working days after award of contract

anticipated workforce/bd

100-442907-6316

CRAFTS UTILIZED FOR THE PROJECT

Project #[illegible]

EXHIBIT D
CURRENT CONTRACTOR'S WORKFORCE

Date:

COMPLETE LIST OF EMPLOYEES

[illegible]

EXHIBIT E

Date

City of Oakland
Contract Compliance Section
1333 Broadway, Suite 810
Oakland, CA 94612

Attn

RE

This letter will serve to inform the City of Oakland that the undersigned has read the Affirmative Action Employment Program and Local Employment Program for Public Works contracts and will comply with the following components of the Programs

- 1 The undersigned Contractor and each of its subcontractors (as applicable), will comply with the employment workforce goals for minority and women workers on a craft-by-craft basis as listed in the Affirmative Action Employment Program goals of 50% minority and 69% women
- 2 The undersigned contractor and each of its subcontractors (as applicable) will comply with the Local Employment Program goals of 40% of the work hours to be furnished by City residents on a craft-by-craft basis, and all new hires to be Oakland residents

Compliance with the goals of these Programs shall be in terms of a percentage in relationship to the total work hours in each trade of the on-site workforce and shall be applied on a continuous month-to-month basis during the performance of this contract. If the goals are not achieved, the undersigned will provide, upon request by the Director of Public Works, documentation of all good faith efforts undertaken as set forth in the program

The undersigned understands that should they be found to be in noncompliance by the City, the City Manager is authorized to impose a monetary penalty or suspend the contract in whole or part until satisfactory evidence is provided of compliance. In addition to any other remedy that the City may have under this contract the developer, contractor and their subcontractors may be debarred from participation on future City projects

Contractor

Owner/Authorized Representative Signature

Address

The developer or contractor shall submit this form within five (5) working days after award of contract

***Organizations That Will Provide Construction Skills
Assessments For Oakland Residents***

Allied Fellowship Services

1524 29th Avenue
P O Box 28882
Oakland CA 94601
Contact Kevin Grant, Vera Lloyd
(510) 535-1236 FAX 534-2650

**Comite de Refugiados Centro
Americanos (CRECE)**

1655 54th Avenue
Oakland, CA 94601
Contact Santos Serrano
(510) 533-1119

United Indian Nations, Inc

1320 Webster Street
Oakland, CA 94612
Contact Rosie Irwin
(510) 763-3410 FAX 763-3646

**Economic Development & Construction
Inc**

1212 Broadway Suite 510
Oakland CA 94612
Contact Waheed Zafir
(510) 238-8874 FAX 930-6921

**Goodwill Industries of the Greater East
Bay, Inc**

1301 30th Avenue
Oakland CA 94601-2208
Contact Sandra Braimah Angel Dominguez
(510) 534-6666 FAX 534-0837

Jubilee West

1485 8th Street
Oakland CA 94607
Contact Ellouise Patton
(510) 839-6776

Cypress Mandela Training Center

2229 Poplar Street
Oakland CA 94607
Contact Marianne Foster
(510) 208-7356 FAX 835-3726

Port of Oakland - ERDP

530 Water Street, 3rd Floor
Oakland CA 94607
Contact Anthony Puig
(510) 272-1131 FAX 272-1172

Spanish Speaking Citizen's Foundation

1900 Fruitvale Avenue, Suite 1-B
Oakland CA 94601
Contact Rosario Flores
(510) 261-7839 FAX 261-2968

Workability II

Berkeley Adult School
1222 University Avenue
Berkeley CA 94702
Contact Kenneth R Brooker
(510) 644-8968 FAX 644-6784



CALIFORNIA WASTE SOLUTIONS

Recycling is our specialty

FILE COPY

Attachment J
List of all Current
Permits held by
Contractor for
Operation of
Facilities

14 July 1997

Ms Susan Kartchee Recycling Supervisor
City of Oakland, Public Works Agency, Environmental Services
1333 Broadway Suite 330
Oakland, California 94612

Dear Ms Kartchee

Thank you for your letter to David Duong dated June 16, 1997 Re your two requested items of information

- 1 the not-to-exceed dollar amount for replacement recycling bins above the contracted-for number will be \$8.25 per bin for the duration of the agreement, and
- 2 the following permits are held by CWS for operations of its facilities

City/State	Permit Type	Case File#	Expiration Date
City of Oakland	Conditional Use Permit	Case File# CM92222 Resolution 65979	n/a
City of Oakland	Business Tax Permit	182931	12/31/97
City of Oakland	MBE Certification	2630 92 12	3/1/99
City of Oakland/ County of Alameda	Hazardous Materials Bus Plan Stormwater Inspection Report	n/a	n/a
State of California DOC Division of Recycling	California Redemption Value Buy Back Licence	RC 5216	12/31/98
State of California DOC Division of Recycling	California Redemption Value Curbside Recycling Licence	CS 000582	12/31/98

As usual, thank you for your time and consideration and please feel free to contact me at any time

Sincerely,

Paul J Rottenberg

JUL 14 1997

PWA ENVIRONMENTAL SERVICES

cc David Duong

1820 - 10 Th St Oakland, CA 94607 USA

Office (510)832-8111 Customer Service (510)836-6200 Fax (510)832-8206

Attachment K
Processing Facility's Relationship to Neighborhood

To address concerns expressed by neighbors of California Waste Solutions' (CWS) facility located at 1820 Tenth Street, Oakland, which is used to process recycling materials, CWS has agreed to take the following actions

- 1 CWS will hire a pest control management firm to evaluate the facility and implement a vector control management program CWS will implement a vector control management program no later than 60 days after execution of this Agreement

The following has been added to Section 14.2.4.2 Service Performance Standards, Liquidated Damages for Failure to Meet Standards Failure to implement or maintain the vector control management program shall result in liquidated damages being assessed in the amount of \$25 dollars a day

- 2 CWS will adjust the opening hour of its California Redemption Value (CRV) buyback operation to 10:00 a.m. to assist in reducing the shopping cart noise in the surrounding neighborhood The buyback hours of operation shall be adjusted no later than 30 days after execution of this Agreement

The following has been added to Section 14.2.4.2 Service Performance Standards, Liquidated Damages for Failure to Meet Standards Failure to notify the City of any changes in the CRV buyback hours of operation shall result in liquidated damages being assessed in the amount of \$25 dollars a day

- 3 CWS will install and maintain landscaping in good condition along the Tenth Street portion of its property in an amount not to exceed \$5,000 CWS will install landscaping, subject to City approval, within 90 days after CalTrans completes construction adjacent to the property located at 1820 Tenth Street

Should CWS fail to install landscaping within 90 days after CalTrans completes construction adjacent to the property located at 1820 Tenth Street, the City shall notify CWS that it shall arrange for landscaping to be installed, in an amount not to exceed \$5,000 and shall deduct the amount from the CWS monthly payment amount

OAKLAND CITY COUNCIL

RESOLUTION No 73080 C M S

gms

RESOLUTION ESTABLISHING A FRIENDSHIP CITY RELATIONSHIP WITH THE CITY OF BOUNA, IVORY COAST WEST AFRICA

Whereas, the Cities of Bouna, Ivory Coast, and Oakland, California have engaged in preliminary discourses towards the establishment of a friendship city relationship, and

Whereas, officials of both cities have expressed a sincere willingness to develop and engage in programs which will be beneficial to the people of both cities, and

Whereas, the municipal officials and the people of the City of Bouna will host an official delegation from the City of Oakland on November 22 through November 30, 1996, for the official recognition of this new friendship city relationship and for the signing of our mutual friendship agreement, and

Whereas, the people and the officials of the City of Oakland enthusiastically endorse the forming of this friendship city relationship in order to

- Develop, coordinate and exchange information between the City of Oakland and the City of Bouna, Ivory Coast,
- Encourage the planning, development and implementation of mutual economic and cultural activities between the two cities,
- Encourage trade relations and the development of cultural and economic ties between the Cities of Oakland and Bouna, Ivory Coast, and
- Develop exchange programs as provided for in the Friendship City Agreement to be executed by the representatives of Oakland, California and Bouna, Ivory Coast, now, therefore be it

RESOLVED That the City Council of the City of Oakland does hereby endorse, establish, and welcome the City of Bouna, Ivory Coast as a Friendship City, and be it

FURTHER RESOLVED That a fully executed and suitably inscribed copy of this resolution be framed and presented to the City of Bouna, Ivory Coast

IN COUNCIL, OAKLAND, CALIFORNIA, NOV 19 1996, 19

PASSED BY THE FOLLOWING VOTE

9- AYES- BAYTON, CHANG DE LA FUENTE, JORDAN, MILEY, RUSSO, SPEES, WOODS-JONES and PRESIDENT HARRIS

NOES- **NONE**

ABSENT- **NONE**

ABSTENTION- **NONE**

ATTEST

Celia Floyd
CELIA FLOYD

Small

**OAKLAND, CALIFORNIA - BOUNA, IVORY COAST
FRIENDSHIP CITY AGREEMENT**

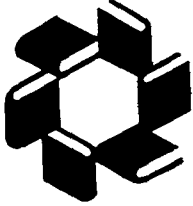
- 1) The City of Oakland, California, of the United States of America, and the City of Bouna, Ivory Coast, West Africa establish Friendship City ties beginning November 22, 1996
- 2) On the basis of the new friendly relations and according to the principles of equality and mutual benefit, the two cities, in various ways, will carry out an extensive range of exchanges and cooperative activities in economics and trade, culture and education, science and technology, public health, tourism, agricultural science, sports, public works and administration, and other fields of mutual interest
- 3) Both cities will encourage the development of joint economic and cultural ties within the areas of activity which they have in common, and these will include in part the encouragement of delegation exchanges, such as students, officials, business development, trade missions, performing artists, members of various professional groups, and others
- 4) It is recognized that the establishment of friendship ties between the two cities will make a contribution towards better understanding and mutual support, peace and the development of close ties between the United States and West Africa

This agreement will go into effect from the date officially signed by the two Mayors of the two cities

Mayor of Bouna, Ivory Coast
WEST AFRICA

Mayor of Oakland, California
UNITED STATES OF AMERICA

Dated _____



Peralta Community College District

333 East 8th Street

Oakland, California 94606

(510) 466-7200

January 15, 1997

Ms. Ceda Floyd
City Clerk
#1 City Hall Plaza
Oakland, Ca 94612

Dear Ms. Floyd:

Enclosed please find the Friendship City Agreement between Bouna, Ivory Coast and the city of Oakland. I have also included our letter of acceptance to Bouna's initial invitation. Hope to see you soon.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dezle".

Dezle Woods-Jones
Office of External Affairs